J. Nuttall,

with the Compliments of the Author.

AMERICAN DIPLOMACY

AND THE FURTHERANCE OF COMMERCE

BY

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TO

THE HONORABLE

J. S. BANCROFT DAVIS

DIPLOMATIST, STATESMAN,

AND JURIST

PREFACE.

THIS book is based on two courses of lectures. The first series, on our Consular and Diplomatic Service, was given at Johns Hopkins University, and also at Cornell University, in the winter of 1885. My object then was to explain the actual workings of one department of our Government, about which there seems to be much ignorance and misunderstanding. My desire was to set forth the usefulness and the needs of these services to young men who were shortly to be called upon to perform the duties of citizens. My only qualification was a deep interest in the welfare of my country and in a service in which I had spent seventeen years.*

* I may, perhaps, be pardoned for stating in detail my official experience. I entered on my duties as consul at Moscow in August, 1867; as consul at Reval in November, 1869; as secretary of legation, at St. Petersburg in April, 1870 (remaining there nearly six years, and being chargé d'affaires in the absence of a minister for thirty out of seventy months, or nearly one-half the time); as secretary of legation and consul-general at Constantinople in July, 1876; as consul at Birmingham in October, 1878; as consul-general at Rome in August, 1879; as chargé d'affaires and consul-general at Bucarest in July, 1880; and as minister resident and consul-general to Greece, Roumania, and Serbia in July, 1882. This

These lectures were so favorably received that in the autumn of 1885 I gave another course at Cornell University, with the intention of showing how our diplomacy had been practically useful in furthering our commerce and navigation. The examples given from our diplomatic history are by no means all. My endeavor was to show only how we asserted our rights to freedom of navigation, freedom from tribute such as was paid to the Barbary pirates, freedom from the police supervision of the Ocean which Great Britain at one time wished to obtain, and freedom from the restrictions on the free navigation of rivers and seas, about which we had disputes with powers so remote as Spain, Great Britain, Russia, Denmark, and Brazil. At that time we had a mercantile marine and a carrying trade worth caring for, and therefore our efforts to assert the rights of neutrals in time of war followed naturally in the development of the subject. A chapter has been devoted to the fishery question, which has occupied the attention of our statesmen from the beginning of our Government to the present time. The concluding chapter considers the efforts of our Government to conclude commercial treaties with foreign powers. It was impossible to speak of the purely political ends which our diplomacy has had in view at different times, without reviewing the whole of our diplomatic history. But even within the limits to which I had restricted myself there are many im-

last mission terminated in July, 1884, owing to the failure of an appropriation. During my residence at Bucarest I negotiated and signed three treaties with Roumania and two with Serbia.

portant topics which it has been necessary to pass by. Such is the question of neutral duties, as distinguished from neutral rights; such is the whole subject of our commercial relations with Japan, China, and the East of Asia; such is the formation of the postal union, with uniform postage, which is due to the initiative of the United States; such are the extradition of criminals, the protection of patents, trademarks, copyright, and submarine telegraphic cables; the unity of weights and measures, and the question of a bimetallic currency.

I desire to express my sincere thanks to the officials of the State Department for their courtesy and assistance in allowing me access to the archives and the library of the Department; and to the authorities of Johns Hopkins and Cornell Universities for allowing me to print these lectures.

EUGENE SCHUYLER.

WASHINGTON, February 8, 1886.

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If we were to put ourselves in the place of an intelligent foreign diplomatist, anxious to discover for his own purposes who were the real depositaries of power in the United States; if we could lay aside for a while the "literary theory" of our Constitution and of its working, which has been taught to us from childhood, and look only at the practice of our representative institutions, as they have been modified, and, as it were, solidified during the last twenty-five years; if we should study the facts alone, as if there were no written Constitution, we should find that, in the last analysis, the Government of the United States, in ordinary peaceful and uneventful times, is

a nearly irresponsible despotism, composed of five or six men, working under and through constitutional forms, and subject only to the penalty which is always exacted for very grave mistakes. These six men are the President of the United States, who is, it is true, elected by the people, but only from two or three candidates proposed by partisan conventions as the result of intrigue or of the failure of intrigue; the Secretary of State and the Secretary of the Treasury, named by the President as his colleagues and associates, rather than his advisers and servants, confirmed by the Senate, which never refuses its approval except for cause of the most scandalous nature, or for reasons of extreme partisan feeling; the Speaker of the House of Representatives, who is elected as such by his fellow-Congressmen at the dictation of a clique or as the result of a compromise between the factions and the personal ambitions of the dominant party; the Chairman of the Standing Committee on Appropriations, and the Chairman of the Standing Committee on Ways and Means in the House of Representatives, both appointed by the Speaker, leading men in Congress, and generally his rivals for the Speakership.

In time of war or internal disorder additions would necessarily be made to this list, both from the Cabinet officers and the chairmen of committees, for other branches of the service would necessarily rise to

prominence. I do not mean to say that no other persons have power or importance, but these are the chief depositaries of power, and without the consent of one, two, or three of these men no important step in public affairs can be taken.

There may be times when, through fear of deranging the revenue system, or for other reasons, the Chairman of the Committee on Ways and Means may voluntarily abdicate, as it were, and give up any active power; and although in the last fortnight of a Congressional session the Chairman of the Committee on Appropriations is virtually dictator, yet he may, and sometimes does, meet with a sharp and sudden check.

It is impossible here to explain the causes which have brought about this state of things and have produced this grave conflict between actual practice and constitutional theory, except to say in brief that it is chiefly due to the operation of the rules of Congress regulating the transaction of public business in that body.*

* These causes have been excellently and clearly set forth in the recent book of Mr. Woodrow Wilson on Congressional Government. Mr. Wilson's views in the main coincide with my own, which were derived from study and some personal experience of the working of our Government during a residence at Washington in 1882 and 1885. As it is disagreeable to mention names, I recommend to the unprejudiced reader a careful study from this point of view of all the proceedings of the last two Congresses, especially the reports of committees. Unfortunately the real work, and the methods employed, but rarely appear in the printed reports.

The Secretary of State and the Secretary of the Treasury are the only Cabinet officers who, in ordinary times, can influence not only the policy of the Government, but also the welfare of the country, without the permission of Congress, nay, even without, it may be, the knowledge of the President. The present delicate relations of the currency question, the silver coinage, the position taken up at times by the Clearing House at New York, the state of the gold market—the mere mention of these is enough to show how a sudden emergency may induce, if not compel the Secretary of the Treasury to adopt a course of action which may strongly affect for good or for bad the most vital interests of the nation.

So with the Secretary of State. By hasty action, by an intemperate or ill-timed insistence on national or individual rights, by even a want of tact or a hasty word, he, or the agents under his control, may cause an irritation hard to be appeased, may embroil us with other powers, may involve us in the political complications of other continents, or may bring upon us all the evils of a foreign war. By an ignorance of precedent, by an unguarded admission, by an act of good nature, or in an impulsive moment, he may give up rights that we have jealously claimed for a century, or which we hold in reserve for future use.

By the negotiation of a treaty he may, if the moment be well chosen, draw the country into a scheme

of annexation, saddle us with a colony or the protectorate of a distant country, or begin a new, and perhaps beneficial course of commercial policy.

In all probability, if we may judge by the past, the Secretary of State will do none of these things. He has been more carefully selected than any other public officer. Generally a statesman of high rank or of long experience, frequently a shrewd and cautious lawyer into the bargain, he has been too prudent to go a step further than where he has felt the ground entirely sure. Sometimes he has not learned that it was possible or useful for the United States to have a foreign policy, or that we had interests beyond the bounds of our own domain, until the expiring months of his administration warned him that it was too late to begin a new line of policy. So far we have erred more from extreme prudence than from rashness.

Still the possibilities of what an enterprising and inexperienced Secretary, ignorant of foreign countries, might do for us, unless he were surrounded by thoroughly trained and skilled subordinates, are such as to make this branch of our Government worthy of special study.

The Department of State was among the earliest of the great divisions of the administration created by Congress in 1789, for facilitating public business, and during the first forty years of our national existence was in reality, as it still is in rank, the leading depart-

ment of the Government. Our foreign policy was at that time of far more consequence to the country than our domestic policy. We still had to struggle, if not for our existence, at least for our position and our national rights. The Secretary of State was, therefore, the leading statesman of the party, and he was almost sure of succeeding to the Presidency. Our foreign relations were, on the whole, well managed, and while we did not carry all the points we tried to win, we gained some great successes then and since. Several of our earlier and best Secretaries of State had had the benefit of personal experience in the diplomatic service abroad, such as Jefferson, Marshall, Monroe, John Quincy Adams, and Clay. This has happened since only in the cases of Buchanan, Everett, and Cass. Probably the worst Secretary we have ever had, was the one who remained the shortest time in office; but who, in the course of six days removed the greater number of consular and diplomatic officers, filled their places with new and inexperienced men, appointed solely for partisan political services, and did harm that it took his successor nearly eight years to remedy.*

* The following list of Secretaries of State may be convenient:

	Secretaries of State.	*Presidents.*
1789, Sept. 26.	THOMAS JEFFERSON, Virginia.	GEO. WASHINGTON
1794, Jan. 2.	EDMUND RANDOLPH, Virginia.	GEO. WASHINGTON
1795, Dec. 10.	TIMOTHY PICKERING, Pa.	GEO. WASHINGTON JOHN ADAMS
1800, May 13.	JOHN MARSHALL, Virginia.	JOHN ADAMS

The Secretary of State is charged not only with the supervision and management of all the foreign relations of the United States, but he has, in addition, duties which in other countries are generally given to the Keeper of the Seals or to the Minister of Justice, such as the keeping, promulgation, and publication of the laws, the custody of the Great Seal, and the pres-

	Secretaries of State.	*Presidents.*
1801, Mar. 5.	JAMES MADISON, Virginia.	THOMAS JEFFERSON
1809, Mar. 6.	ROBERT SMITH, Maryland.	JAMES MADISON
1811, April 2.	JAMES MONROE, Virginia.	JAMES MADISON
1817, Mar. 5.	JOHN QUINCY ADAMS, Mass.	JAMES MONROE
1825, Mar. 7.	HENRY CLAY, Kentucky.	JOHN QUINCY ADAMS
1829, Mar. 6.	MARTIN VAN BUREN, N. Y.	ANDREW JACKSON
1831, May 24.	EDWARD LIVINGSTON, La.	ANDREW JACKSON
1833, May 29.	LOUIS MCLANE, Delaware.	ANDREW JACKSON
1834, June 27.	JOHN FORSYTH, Georgia.	ANDREW JACKSON MARTIN VAN BUREN
1841, Mar. 5.	DANIEL WEBSTER, Mass.	WM. H. HARRISON JOHN TYLER
1843, May 24.	HUGH S. LEGARÉ, S. C. *ad int.*	JOHN TYLER
1843, July 24.	ABEL P. UPSHUR, Virginia	JOHN TYLER
1844, Feb. 29.	JOHN NELSON, Md. *ad interium.*	JOHN TYLER
1844, Mar. 6.	JOHN C. CALHOUN, S. C.	JOHN TYLER
1845, Mar. 6.	JAMES BUCHANAN, Pa.	JAMES K. POLK
1849, Mar. 7.	JOHN M. CLAYTON, Delaware.	ZACHARY TAYLOR MILLARD FILLMORE
1850, July 22.	DANIEL WEBSTER, Mass.	MILLARD FILLMORE
1852, Nov. 6.	EDWARD EVERETT, Mass.	MILLARD FILLMORE
1853, Mar. 7.	WILLIAM L. MARCY, N. Y.	FRANKLIN PIERCE
1857, Mar. 6.	LEWIS CASS, Michigan.	JAMES BUCHANAN
1860, Dec. 17.	JEREMIAH S. BLACK, Pa.	JAMES BUCHANAN
1861, Mar. 5.	WILLIAM H. SEWARD, N. Y.	ABRAHAM LINCOLN ANDREW JOHNSON
1869, Mar. 5.	ELIHU B. WASHBURNE, Illinois.	U. S. GRANT
1869, Mar. 11.	HAMILTON FISH, New York.	U. S. GRANT
1877, Mar. 12.	WILLIAM M. EVARTS, N. Y.	R. B. HAYES
1881, Mar. 5.	JAMES G. BLAINE, Maine.	J. A. GARFIELD CHESTER A. ARTHUR
1881, Dec. 12.	FRED. T. FRELINGHUYSEN, N. J.	CHESTER A. ARTHUR
1885, Mar. 6.	THOMAS F. BAYARD, Delaware.	GROVER CLEVELAND

ervation of the Government archives, as well as the charge of all official relations between the general Government and the several States.

Of the three Assistant Secretaries, the first is considered as a political officer, in the full confidence of his chief, able to advise with him, and even at times to replace him; the other two, by custom and necessity, have become permanent officials. Even in our changing service the need of experience and special knowledge has at times more force than the demands of politicians.*

These Assistant Secretaries take charge of special branches of the foreign correspondence, under the general supervision of the Secretary, although the relations with foreign ministers resident in Washington are conducted by the Secretary in person, if he be able to converse with them, for not all foreign ministers come to America knowing English, and those from South America do not always speak French, and not all Secretaries of State understand any other language than English.

For the convenient despatch of business the Department is divided into several bureaux—the Diplomatic Bureau; the Consular Bureau; that charged with the accounts of the Department and of all the

* Mr. William Hunter, the present Second Assistant Secretary, has been in continuous service in the State Department for more than fifty-five years.

subordinate officials, which also takes care of the building and property of the Department and of all indemnity funds, bonds, and other money; the Bureau of Rolls and of the Library, charged with the keeping and preservation of all the archives of the Department, among which are included the revolutionary archives, some of which were formerly kept in other departments, the laws as they come from Congress, and other documents; the Bureau of Statistics, which devotes itself chiefly to the preparation of the consular, commercial, and statistical reports in a form for publication.

Another very important Bureau is that of Law, which is under the charge of an official nominally detailed from the Department of Justice, and which examines, when directed by the Secretary, all pending questions of international law submitted by the Secretary, and all international claims. It corresponds to what is known in most Foreign Offices as the *Bureau de Contentieux*. In England the head of this department is one of the permanent Under-Secretaries of State; and in the reorganization of our State Department, which must come sooner or later, it would be well if the functions of the Solicitor, or Examiner of Claims, his technical title, could be combined with those of Assistant Secretary. In the past this bureau has sometimes been negligently managed; its incumbent should not only be an able international lawyer,

like the learned gentleman who has consented to take charge of this work now; but he should hold a permanent position, so as to enable him to keep the track of claims, sometimes ill-founded, which after being rejected under one administration are sure to be brought forward under another; and he should have salary and position enough to keep him from the temptations sometimes offered by suitors who have large claims against foreign governments.

The Index Bureau has charge of the current records of the Department. Every despatch received is sent there as soon as opened, and before it is acted upon, in order to be registered, indexed, and cross-indexed, and so marked that it may be found with ease and cannot be lost or mislaid. Letters and despatches from the Department are, in the same way, press-copied, registered, and indexed before being sent out. In one way this bureau is the key to the whole system, for without it all would be confusion. As to the Passport Clerk, the Pardons and Commissions Clerk, the Translator, the Telegraph and Mail Clerks, it is sufficient to mention their names to understand their duties. The routine of business is carried on much in the same way as in other departments of the Government, or as in the Foreign Offices of other countries.

But eminently conservative as the State Department is in its forms of communication, and especially in the addresses of its letters—an American Minister,

for instance, being never styled "Honorable," but only —— ——, Esq., etc.,—we may notice the absence of any bureau specially charged with questions of ceremonial and precedence, an important subject in international dealings, diplomatic privileges, and etiquette, such as exists in the Foreign Offices of England, France, and other countries. Since the Republic has been established in France, one of the officials of this department (which is called *Service du Protocole*) is also introducer of ambassadors and has charge of the presentation of their credentials by all foreign ministers accredited to the Elysée, thus taking the place of the former Masters of Ceremonies. Now if there were one person charged with this duty at Washington, the State Department would make fewer mistakes of etiquette in dealing with foreign representatives—though on the whole it makes few—and there would be no errors of title in the ceremonial letters which it is so often necessary to send to foreign sovereigns, or the credentials or full powers. It is manifestly wrong, for example, in a letter intended for the King of the Hellenes to style him the "King of Greece," and a minister already duly accredited to His Majesty the King of Serbia cannot present his letters of recall addressed to "His Highness the Prince." Such letters have to be returned for correction, thus causing awkward delay. There are many small questions of etiquette coming up every season in Washington—invi-

tations to public ceremonies, the propriety of uniform on certain occasions, places, precedence—which now have to be decided by the Chief Clerk, who has too much else on his hands always, to think about these petty details, unless they are referred to him. I have heard officials of the State Department say that it would be far more difficult for us to receive than to send ambassadors, on account of the complications of etiquette which would arise, and with which no one now could deal. An officer of the kind here suggested would solve these difficulties, and would save all the rest from the responsibility which seems to oppress them when anything goes wrong. He would, however, lead a dog's life, unless he had tact as well as experience.

If I might make one more criticism upon the State Department, it would be to note the slight importance given to a knowledge of French in the selection of clerks and officials. A fair proportion of the clerks understand French, and some Spanish, also a very useful language to us; but this knowledge is not a requirement for their appointment. Ignorance of French, which is of prime importance in our intercourse with foreign nations, forces also our consuls and ministers abroad to do much useless work in the way of translating documents, which need never be translated at all, unless communicated to some other department, sent in to Congress or otherwise published. In

nearly every Foreign Office in the world a thorough knowledge of French is required of every clerk, as a preliminary to his appointment. The clerks in the British Foreign Office must, besides a *thorough* knowledge of French, have a good knowledge of German.

What is most to be remarked here is the secrecy with which everything in the State Department is managed. This is not only because the officials are usually careful and trustworthy persons, but because the general public is, as a rule, slightly interested in what concerns our foreign relations. It is only when some great subject is in dispute that the community at large is curious to know what is going on. In countries like England, France, or Italy, where the Minister of Foreign Affairs, or his immediate subordinate, has a place in Parliament and can be interrogated at any time with regard to particular questions arising with foreign countries, the public is more or less informed as to the state of foreign relations, even though the progress of negotiations be kept secret. Here the only method for obtaining information on such topics is for either House of Congress, by a resolution, to ask from the President the papers on the question, and make an investigation, if considered necessary, by the Committee on Foreign Affairs. Such papers can, however, be always refused if it be thought that their publication would be disadvantageous to the interests of the Government. It may

be safely asserted that there is scarcely a country, even Russia or Germany, where so little is known by the public of the negotiations carried on at any one time by the Secretary of State. This has very great advantages, as it enables the Government to conduct with tranquillity a negotiation which may be extremely necessary, and often to settle disputes which, if public opinion were excited, might result in a breach of friendly relations. This country was probably never so near a war with England, since the time of the Trent affair in 1861, as it was about three years ago with regard to arbitrary arrests in Ireland. But owing to the secrecy, as well as the skill, with which negotiations were conducted the newspapers and the public knew little about it until it was all over.

It is just this noiseless and quiet despatch of business which deceives many persons as to the amount of work transacted by the State Department. Because little is said it is thought that little is done. Besides the ordinary routine work, a question asked in Congress frequently causes a month of hard labor in preparing digested commercial or statistical information, or in copying hundreds of pages of documents. Clerks not rarely work till late at night, and all day on Sunday. The hardest work of all, in one sense, falls on that much-abused official, the Chief Clerk, who has to sit in a public room, accessible to every one; must inspect every paper that comes in

or goes out; must carry in his head the whole business of the Department in all its details; must see every one who calls, assist those who have legitimate business, listen to the others and give them a soft answer but no information, and withal be patient and keep his temper.

Indeed the efficiency of the State Department is, to those who know it, as remarkable as its economy. Hampered as it is by niggardly appropriations, all the expenses within its control are reduced to the lowest possible figure, and every penny spent, and every fee received, are rigorously accounted for. Probably since the war no other department of the Government has been so economically and so honestly administered as this. During the fiscal year ending June 30, 1884, the total expense of the Diplomatic and Consular Service was nominally $1,288,355.28; but as the fees received amounted to $899,652.67, the real expense to the nation was only $388,702.61, or less than $400,000. About as much more was expended in the Alabama and French Claims Commissions, the Bimetallic, etc., Commissions, various Foreign Expositions, Electric and other; while the salaries of all the officials in the Department, even including the watchmen and laborers, amounted to only $127,290. The expenses of the British Foreign office and Foreign Service amounted, in the same year, to $3,205,748, and of the French to $2,883,362.

The salary of the Secretary of State is $8,000, that of the Assistant Secretary, $4,500, and that of the Second and Third Assistant Secretaries, $3,500. In the present conditions of life at Washington these salaries are all too small. Owing to the climate, and to the pleasantness of the capital, there has been recently a great influx of strangers, and it has become fashionable to pass the winter there. This has naturally brought about a great increase in rents, in prices, and in the general cost of living. For a long time it has been impossible for a man to accept the office of Secretary of State, unless he should have an independent fortune. His salary has been barely sufficient to cover the additional expenses necessitated by his position. There is no use of blinking at the truth. Whatever our theory, whatever our desires may be, the fact remains that "society," with the tastes, amusements, and expensive habits of "society," exists in Washington; that the Secretary of State, as the natural representative of the President, who in our theory is relegated to the White House, is called upon to play, and actually does play, a considerable part in "society." If the other members of the Cabinet entertain, they do it at their good pleasure; but it is to the Secretary of State that Washington—and in the winter Washington now represents the nation—looks for entertainments. He may possibly try to avoid these duties thrust upon him; but most men would rather borrow

or beg, than go down to posterity with the reputation of parsimony and meanness. To come down to details, the President, except at state dinners, gives nothing but spectacles, and does not offer his guests even a glass of water. There may be substantial reasons for this, and yet when these reasons come to be examined they may turn out merely superficial excuses for bad management and bad manners. The whole burden of entertaining—for food and drink, as we all know, cost money—falls upon the Secretary of State as the President's representative. But apart from domestic considerations, there are what might be called international obligations; and, whatever may be our faults, we do not like to be deficient in hospitality. Even reciprocity is sometimes a virtue. In European capitals, where the society is generally so large that a foreign minister makes his way solely through his agreeable qualities, and not through his official position, which merely gives him an entry to the society, the house of the Minister of Foreign Affairs is pre-eminently the place where foreign diplomats can meet the local society and can become acquainted with the ministers and chief officials of the country; and where also, for there is a mutuality in the case, the officials, and the Minister of Foreign Affairs himself, can get better acquainted with the diplomatists than is possible in formal official interviews. To transact business well, it is necessary to have a knowl-

edge of the man you are talking to; and this can be gained only by social intercourse. It must be admitted that there is less necessity of this in Washington than in most capitals, for there are few places, if any, where diplomats receive so much social attention as with us. Still, it is necessary and proper for us, in the person of the Secretary of State, officially to reciprocate the courtesies shown to our representatives abroad. These considerations apply also, though in a less degree, to the Assistant Secretaries. They should be able to take some of the social burden off the back of their chief. It is just this representative character toward foreign nations which renders it necessary to select the chief officials of the State Department with more care, and to remunerate them more highly than is necessary for the corresponding functionaries of other departments, whose duties are purely domestic. Other governments have generally recognized this by fixing the salaries of the Ministers of Foreign Affairs and their chief subordinates on a much higher scale than for other officials. Their Ministers often have official residences, with every convenience for entertaining largely, and an addition to their salaries in the shape of "expenses of representation."

The Department of State is not the sole authority for the administration of foreign affairs, for here comes in the Senate, in certain capacities, not only for the confirmation of the nominations to diplomatic and

consular posts made by the President, but also for the consideration and approval of treaties made with foreign powers before they can be ratified. Most constitutional countries nowadays have a similar proviso, that treaties must be approved by Parliament before ratification. In some countries even, as Spain, Italy, Roumania, and others, both houses are consulted on the subject, and discussions are public. Fortunately they can only affirm or reject a treaty; but owing to the wording of the article of our Constitution, which says that "the President, with the *consent and advice* of the Senate, shall conclude treaties," the Senate considers that it has a right to *amend* a treaty already negotiated, a practice which causes great difficulty, as frequently a senator, to whom the subject under discussion is not quite clear, insists on the addition of two or three words to an instrument, which produces a long delay, and frequently protracted negotiations. The practice, as we all know, is, that treaties are discussed in secret session, the theory being, partly, that the Senate in this case is acting as a privy council to the President, and partly that, if the debates were open, things might be said which would be offensive to foreign governments. As to this latter point, I can only observe that the practice of debating a treaty in open session has not been found to work badly in those countries in which it is the habit.

There was from the beginning a feeling of jealousy

between the House of Representatives and the Senate, on the subject of the treaty power, which has manifested itself at various times and has become very evident during the last year, the House maintaining that as it alone is empowered to initiate measures touching the revenue, the President has no right to negotiate a commercial treaty without previously consulting that body. It does not seem that this contention can be supported by the text of the Constitution; but at the same time the practice of our Government has so much changed of recent years, in giving continually larger and larger powers to the lower House, that it is not without some reason that such a view should be supported. A commercial treaty concluded with the German Zollverein was rejected by the Senate in 1844 by a strict party vote of twenty-six to eighteen, on the ostensible ground that "the Legislature is the department of Government by which commerce should be regulated and laws of revenue passed." The true cause, according to Mr. Calhoun, was "the bearing which it was feared it would have on the Presidential election." * No such objections were made to the ratification of the Canadian Reciprocity Treaty in 1854, nor to similar subsequent treaties, and, until the Spanish treaty came up, it was thought that this feeling had died out.

* See Lawrence's Wheaton, edition of 1863, Introductory Remarks, p. cvii. Letters of Calhoun of June 28, 1844.

Such disputes, however, could always be obviated if the State Department, before making a commercial treaty, and engaging the country in a new commercial system, should, as was done in the negotiation of the last Mexican treaty, ask Congress for authority to conclude it. In all recent treaties a clause has been inserted covering this point, that the treaty is to be inoperative until Congress has passed such laws as may be necessary to carry it into effect; otherwise there would be the disputed point that, according to the Constitution, a treaty is superior to all laws then in force, and the actual practice that the *municipal* operation of a treaty may be abrogated by a law. Cases have already occurred, for instance, with regard to duties on works of art coming from Italy, where it is claimed that the treaty is infringed, but where Congress has been unwilling to pass a law removing the duties.

The powers allowed by the Senate to its Standing Committees form another obstacle to the ratification of treaties, as it is impossible, except by an actual vote of the Senate, to compel the Committee to report back to the full Senate a treaty which has been already referred to it for consideration. I cite at random one notorious case of this kind, where the United States made a treaty with Denmark for the annexation of the islands of Santa Cruz and St. Thomas. Denmark had no particular desire to sell to the United

States, but was persuaded to do so. The inhabitants of the islands had already voted to accept the United States as their sovereign. The late Mr. Charles Sumner, then Chairman of the Committee on Foreign Relations of the Senate, who was engaged in a personal quarrel with the administration, simply refused to report back the treaty to the Senate, and he was supported by a sufficient number of his committee and of Senators to enable the matter to be left in this position. It required new negotiations to prolong the term of ratification, and it was with great difficulty that in a subsequent session the treaty was finally brought before the Senate and rejected. As may be imagined, our friendly relations with Denmark were considerably impaired by this method of doing business.

Both the Senate and the House have Committees on Foreign Affairs. Practically these committees have lately had little to do, except as to treaties, with the conduct of our foreign relations, although formerly the Secretary of State consulted with them. Questions arising with regard to foreign affairs in either House of Congress are generally, though not always, referred to these committees. The House Committee on the Expenditure of the State Department acts in theory simply as auditor of the accounts; in reality it does nothing. Of late years, and until the 49th Congress, the Senate and House have practically

given up all control of the appropriations, and of the salaries paid to diplomatic and consular officers to the Committees on Appropriations, or rather to subcommittees of those committees, composed of three persons in each body. By law the Secretary of State is bound to send to the Secretary of the Treasury detailed estimates of the amount of money required for the conduct of his Department during the ensuing fiscal year. These estimates are printed in a thin quarto volume, together with those of the other Departments, under the title of "A Letter from the Secretary of the Treasury containing the Estimates," copies of which are sent to the several Committees on Appropriations, on or before the beginning of each session. In the Senate all the committees are elected; in the House they are named by the Speaker. The subcommittee of three which had charge of the appropriations for the diplomatic and consular service was generally named by the chairman of the committee. The chairmanships of the Standing Committees are almost the only honors which it is possible to obtain in Congress, and these only by long service. They have their rights to the floor and their little perquisites in the shape of clerks and committee-rooms, and they are therefore much sought after. As the Speaker must make up his committees, according to custom, pretty equally among the various sections of the Union, and must, according to prac-

tice, put on them a certain number of the minority, he finds himself obliged to place the best men in the House at the heads of the various committees, and, therefore, it is impossible for him to make up any one committee, no matter how important of itself, wholly of those persons who are the most experienced, or who have a special knowledge of the subject. It would, therefore, be an almost impossible thing that the Committee on Appropriations should be composed wholly of good men; and unless the chairman were a man particularly interested in foreign affairs, in nine cases out of ten the Subcommittee on Appropriations for the Consular and Diplomatic Service would be composed of persons possessing no previous acquaintance with the subject. The subcommittee of the House, then took up the estimates presented by the Secretary of State and prepared a bill. It was not content with the present establishment, and refused to be governed by the General Law or the Revised Statutes. It raised a grade here, established a consul there, pared down a salary in one place, abolished a mission in another, made an important change in a third, and so on. Some of these changes were often excellent and even necessary, but the principle of new legislation in an appropriation bill was, according to the rules, wrong, unless it were "in the interest of economy." The main idea of the subcommittee seemed to be to reduce the appropriation to the low-

est limit, from motives of *economy*, they said; not that the nation at large cared for, or even knew of, this saving of ten or twenty thousand dollars to the detriment of its interests, but because the reputation of being economical, and "watchdogs of the Treasury," would possibly help them in their district, and their constituents might believe them worthy of a new election. The bill was then reported to the House; the party strength was drilled to support the committee. Every amendment was voted down, for the men whose salaries were sometimes retroactively abolished were too far away to be heard; no changes were made save of one kind; some objector invoked the rules of the House against every slight increase of pay or grade as "new legislation," but any diminution was passed without notice, because although it had evidently the same character, it was "in the interest of economy." From the House the bill went to the Senate. The general theory of the Senate committee is to reject every change made by the House, and to return pretty closely to the Law of the last Congress, restoring what has been omitted, and adding a few largish appropriations for unforeseen expenses, secret service money, or, as it is technically expressed, for "expenses in carrying out the Neutrality Act," and the like. These are necessary to bargain with. The Senate passes the amended bill with slight debate, except in unusual cases. We have now reached the

last days of the session, when there is no time for the detailed consideration of any measure. The House, on motion of the member in charge of the bill, rejects, without debate, all the Senate amendments, and suggests a Committee of Conference; the Senate in like way refuses to recede, and accepts the conference. The two committees, or as many as choose to attend, then meet in *secret* conference, bargain with each other, give and take, each yield in part, and report the result back to their respective houses in such a technical form that it is impossible to understand it without a careful examination of all the papers; it is read hastily by the clerk, and it is passed without debate. It may, and frequently does, contain new matters never before proposed in the open House. And thus six men have *secretly* decided upon an important law and have forced it through Congress.*

* As a specimen of the Report of a Conference Committee, here is that agreed to at the end of the last Congress, from the Congressional Record.

"The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 7,857) making appropriations for the consular and diplomatic services of the Government for the fiscal year ending June 30, 1886, and for other purposes, having met, after full and free conference have agreed to recommend, and do recommend, to their respective Houses as follows:

"That the Senate recede from its amendments numbered 12, 13, 19, 20, 22, 23, 24, 43, 48, 51, 52, 62, 63, and 64.

"That the House recede from its disagreement to the amendments of the Senate numbered 1, 3, 4, 5, 6, 7, 8, 9, 10,

I am not blaming either Republicans or Democrats —both do the same thing—I am only explaining the system which is getting to be the habitual way of passing all appropriation bills. We can see how debate is stifled, and what a chance there is for jobs in some bills.

We must see also the disastrous effects of this system upon the public interests, vacillation in our foreign policy and disorganization in our foreign service. How can an already underpaid consul per-

11, 14, 15, 16, 17, 18, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 41, 42, 45, 46, 47, 49, 50, 53, 54, 55, 56, 57, 58, 60, 61, and 65, and agree to the same.

"That the House recede from its disagreement to the amendment of the Senate numbered 2, and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by said amendment insert the following:

"'For salary of Envoy Extraordinary and Minister Plenipotentiary to Turkey, $10,000.

"'For salary of Envoy Extraordinary and Minister Plenipotentiary to the United States of Colombia $7,500.'

"And the Senate agree to the same.

"That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment as follows: In lieu of the sum proposed, insert '$319,000;' and the Senate agree to the same.

"That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment as follows: In lieu of the sum proposed insert '$48,880;' and the Senate agree to the same.

"That the House recede from its disagreement to the amendment to the Senate numbered 44, and agree to the same with an amendment as follows: Restore the word stricken out by said amendment; and the Senate agree to the same."

form his duties properly and vigorously when every few months he has to consider the chances of having his salary cut down, or, when engaged in an important investigation by order of his Government, he is quietly informed that his salary ceased a month or six weeks before ?

The interests of the country demand that our diplomatic and consular service should be fixed by a general law, subject of course to necessary changes, to be recommended by the Department, and not undergo this annual tinkering, to which *no other* branch of the Government and *no other* class of officials are subjected.

Since the above was written the rules of the House have been so changed as to take away from the Committee of Appropriations the control of the appropriations for several branches of the Government, among them those for the consular and diplomatic service, which are given to the committee on Foreign Affairs. This important step will be greatly to the benefit of that service, and therefore for the best interests of the country. It has, however, still more important consequences, in reducing the tyrannical and unconstitutional powers of the governing junto. What has been written is nevertheless allowed to remain, in order to show to what point our Government had come when this salutary measure was taken.

In countries where Parliamentary rather than Con-

gressional government prevails, either the Minister of Foreign Affairs or one of his assistants is present at the debates, and is able to show cogent reasons in support of the estimates of the government. Even under our system there is no reason why one of the Assistant Secretaries of State should not go before the committee and support the propositions of the Department and the plan already adopted by Congress and in operation. Unfortunately there seems generally to reign a misunderstanding between the State Department and the House of Representatives. Whether it be that the Secretary wishes to emphasize the fact that the Senate is in a way associated with him in the conduct of foreign affairs, or whether, acting on old rigid notions of Constitutional theory, he may wish to assert the divorce between the executive and the legislative branches of the Government, he is not generally quite so accessible, nor so ready with explanations to the committees of the House as to those of the Senate. At least the members of the subcommittee have often complained that when they have visited the State Department for the purpose of consulting the Secretary on the estimates great reticence has been shown, and explanations have been delayed. This has wrongly impressed them as exaggerated secrecy, unwillingness to explain, and desire for concealment, if not rudeness, when it was probably merely owing to an imperfect acquaint-

ance with small details on the part of the Secretary. The Chiefs of the Diplomatic and Consular Bureaux, who have, in the end, furnished the committees with information, have not had the power to accept suggestions in behalf of the Secretary. Indeed, instead of accepting changes, the Department has generally looked to the Senate to undo those made by the House. To such an extent has this distrust been sometimes carried, that (as I have the best authority for saying) recently a large appropriation, which was thought very desirable by the Secretary, failed simply because he refused to take the House committee into his confidence in the matter. The feeling of official dignity was stronger than the desire to forward his political views.

The State Department is charged with the publication of various information, especially of a commercial nature, sent by its agents abroad. It was the practice for many years to publish nothing sent by the consuls except their annual reports, which were transmitted to Congress, at each session, either with or without a general view of the whole subject of our commercial relations. Owing to delays in printing, these reports, which were published in one or two large volumes, were generally a year or two behind their date, and were of no practical service to merchants engaged in the export trade or desirous of obtaining information with regard to the commerce of

other countries. When Mr. Evarts was Secretary of State a new system was introduced, by which the chief reports of consuls were published every month, and copies were not only widely distributed, but were sold. At the same time the consuls were encouraged, by circulars and direct requests, to furnish far more commercial information than before. This system has worked very well; and it is to be hoped that the practice of publishing the annual reports in a separate volume will be given up, and that they will be published as fast as they come in.

It has also been the custom to send annually to Congress, and ultimately to print, a selection from the reports and despatches of the ministers of the United States abroad.

Up to 1861 our Government published no regular collection of the correspondence between the Department of State and our ministers abroad. Sometimes a few documents, relating to an important negotiation or to a disputed question, accompanied the President's annual message. More often such papers were sent to Congress in answer to a special resolution, and were printed under the title of "Executive Documents." Such special publications still continue;* but in 1861, to satisfy the natural curiosity about our foreign relations, which at times during the civil war were very

* A list of these special publications is printed from time to time in the Register of the State Department.

critical, Mr. Seward began printing thick volumes of "Diplomatic Correspondence," which, besides important papers, contained much that was trivial and uninteresting, even historically. In 1869 no papers were published. In 1870 Mr. Fish began again the publication of annual volumes under the name of "Foreign Relations," which from their red binding came to be known as the "Red Book." This publication still continues.

Such publications exist in many countries. In France we have the "Yellow Book," in Italy the "Green Book," and even during the last year a selection of diplomatic despatches has been published by Germany. The English never publish their despatches exactly in this form. They wait until some particular subject arises and some question comes up in Parliament, when all the papers relating to that point are collected together and published in the form of a "Blue Book." This seems to be the only proper way for publication, as it would be wrong to print, simply for the general information of the public, anything more than the routine despatches telling of negotiations which had finished, or of the state of the government, changes of administration, the economical and political situation, etc., in the countries where the ministers are accredited. Even with all the care that can be exercised despatches are not infrequently published which get their writers into trouble. It may

be remembered, for instance, that the late Mr. Marsh became involved in an annoying difficulty in Italy on account of the publication of a sentence (which he had even written in cipher) in one of his confidential despatches, questioning the sanity of the king. Of still more recent date is the difficulty with Germany, arising from the publication of a despatch of our minister on the pork question, which resulted ultimately in his recall, disguised under the name of transfer. Numerous other instances might be mentioned.

It would be much better to cease printing diplomatic despatches, unless Congress ask for information on special subjects. Even then great caution should be observed. Foreign governments sometimes make confidential communications, and in such cases it would be improper to print these communications without the consent of those governments. At present our ministers do not feel free to express to the Secretary their real opinions, for they have always in view the possibility that their despatches may be published. They must therefore have recourse to confidential personal letters, when they wish to say anything they do not wish to come back on their heads. This practice is useful, but it has the disadvantage that such letters are carried away by each Secretary and are not in the archives for the information of his successor. Even confidential letters do not always tell the whole truth. It has been said about the

papers of a celebrated Frenchman, a plenipotentiary at the Congress of Verona, that they were of four kinds; first, his despatches to the Minister of Foreign Affairs, which might if necessary be communicated or published, showing how it was desirable that matters and transactions should appear; second, his confidential letters to the minister, showing how *he* wished matters to appear officially; third, his letters to an intimate friend, giving an unofficial view of affairs which he wished to be regarded as the true one; and, lastly, his diary giving the naked facts and the exact truth.

There are, besides the Statutes at Large, some publications of the Government which, from their contents, pertain to the State Department, but which have been omitted in our enumeration, because these are publications of archives rather than of contemporary documents. Such are: 1. The "Diplomatic Correspondence of the American Revolution from 1776 to 1783," edited by Jared Sparks, originally printed in Boston in 1829–30 in twelve volumes, and subsequently reprinted in Washington in 1857 in six volumes. 2. "The Diplomatic Correspondence from 1783 to 1789," printed at Washington in 1833–34 in seven volumes and reprinted in 1837 in three volumes. 3. "The Diplomatic Correspondence from 1789 to 1828," entitled "American State Papers, Class I., Foreign Relations," published in six volumes folio, at Washington, 1832–59,

part of a large series. 4. The collection of "American Archives," edited by the late Peter Force, of which only nine volumes were published at Washington, 1837–48. This was intended to be a complete documentary history of the colonial and revolutionary periods. Such are also the papers of Washington, Jefferson, Madison, Monroe, Adams, and Franklin, the expenses of printing which were paid either in whole or in part by the Government.*

The Department of State has the custody of many important collections of papers relating to the early history of the United States. Besides the papers just mentioned, most of which were bought by the Government, and are therefore the property of the nation, its archives contain a large mass of papers relating to our Revolutionary history, and other important collections, such as the journals, logbooks, etc., of the Russian-American Company, which are very valuable for the history of our Pacific coast. The latest great acquisition comprised the Franklin papers found in England.

* The cost of printing the proceedings of the Convention which formed the Constitution and the secret journals of the old Congress, was $10,542 ; of the first edition of Spark's Diplomatic Correspondence, $50,881 ; of the Diplomatic Correspondence, 1783–89, $16,142 ; of the American Archives, $236,605. There were paid for the papers of Washington, $45,000; for the papers of Monroe, $20,000 ; and for the papers of Hamilton, including the expenses of publication, $26,000.

There exist still in European archives many series of papers of the highest importance to our early history, free access to which is not easy to the American historian, and of which very few have ever been copied or printed. Such are the military and diplomatic documents, the reports and private letters during the whole of the Revolution, the papers relating to the peace negotiations, and the very curious diplomatic correspondence preceding the War of 1812, which are preserved in the English State Paper Office, the British Museum, the Royal Institution, and the great private collections of England. Such are the important papers in the French, Dutch, and Spanish archives. The detailed reports of the Hessian officers are kept in Germany, and even the Russian archives at Moscow contain reports from a secret agent at Philadelphia, during the Revolutionary War, as well as correspondence from Paris, London, and the Hague, relating to American affairs. It is safe to say that with the help of these documents many parts of our Revolutionary history could be rewritten. It would seem to be the duty of our Government to procure copies of all these papers, of whatever character they may be, to calendar them, and to print those of importance. In so doing, we should be only performing our share of the work undertaken by most other governments. Nearly every country of Europe is now engaged in completing its archives from the

stores of other countries, and in making them accessible to the public.

In this respect—of the accessibility of our archives—we are far behind other nations. Owing to the small clerical force at the disposal of the State Department, and to the illiberal ideas which, until recently, prevailed there, not only official documents, but papers which had been purchased by the nation, and were intended for use, were kept secret, and guarded with the most jealous care. The late Friedrich Kapp tells in an amusing way, in some of his prefaces, of how his requests for information were treated by Mr. Seward. Although there is now much more freedom, yet the rules with regard to the access to our archives are exceedingly strict when compared to the practice in most European State Paper Offices. The rules now in force are briefly these:

1. General searches are not permitted.

2. Facts concerning Revolutionary soldiers are communicated *only* to the heirs of such soldiers who give the Department satisfactory proof of their right to information.

3. Students and writers of history properly made known to the Department, are permitted to see and examine *particular* documents specified by them.

4. So far as other official duties will permit, abstracts of papers are prepared for the assistance of

those who desire information about events of which there are *no published* authorities.

5. All transcripts are made by the employees in the bureau in which the originals are preserved.

If the Secretary of State would study the rules which now govern the archives of France, Prussia, and even Russia, he would probably see that he could be still more liberal, and could greatly facilitate historical research by relaxing some of these restrictions.

It must be admitted, however, that in times past our archives have been very carelessly treated, and many papers are torn and mutilated. They should all be carefully indexed and bound, and many of them copied, so that the original papers need not be handled except on special occasions.

An "Historical Register of the Department of State," published a few years ago, gave valuable information about the history of our diplomatic service. It would be well to complete and republish it, or better still to print the thorough and careful record prepared by Mr. John H. Haswell, the Chief of the Bureau of Indexes and Archives, which gives the official history of every one ever connected with the foreign relations of the United States.

II.

OUR CONSULAR SYSTEM.

Origin of Consuls.—History of our System.—Law of 1856.—Consular Duties.—Invoices.—Accounts.—Reports.—Consular Jurisdiction, Civil and Criminal.—Need of Reorganizing Consular Courts.—Examples of Hard-working Consulates.—Consular Privileges.—Qualifications for Consuls.—Examinations.—Consuls should not be Merchants or Foreigners.—Grades of Consular Officers.—Salaries.—Fees.—Allowances.—British and French Systems.—Need of Reform.

So far we have considered only the central office, the home management of our foreign relations.

We now find resident at various capitals and ports abroad agents of the Government, under the control of the State Department, belonging to two classes, those in the consular and those in the diplomatic service.

Consuls differ from diplomatic agents (by whatever name they may be known) that the latter are the representatives of one State or Government to another, while consuls are the representatives of the individuals of the nation sending them, empowered to protect individual interests, and to procure for

their fellow-citizens, so far as possible, the same protection to their rights that they enjoy at home. They represent commercial interests only, and while they can address themselves directly to the local authorities, when the rights of their fellow-citizens are infringed, if redress be not given they cannot apply to the supreme government except in cases specially provided for by treaty. They must refer the matter to their legation or their own government. In other words, they have *no* diplomatic or representative rights, powers, or privileges.

It is unnecessary to enter into any detail about the origin or history of consular establishments. That forms a part of the history of international law. It is sufficient to say that they began, in somewhat near the present form, after the Crusades and the decay of the Eastern Empire, when the Venetians and other Italian peoples began to establish themselves in the East for the purposes of trade. An officer was appointed, generally from among the number of merchants, to decide the disputes between the members of these little foreign colonies on an infidel shore.

From the East this institution came back to the commercial towns of Southern Europe, where the merchants took up the habit of electing one of their number to decide their commercial disputes, according to custom and usage, without the formalities of a regular court of law. These judges or arbitrators

received the name of *Juges-Consuls*, Judge-Consuls or Consul-Judges, and their tribunals were the origin of the present commercial or consular courts in France, Italy, and Spain. The name was natural enough, for in those towns that had formerly been Roman colonies, such as Cologne, Lyons, and Marseilles, the title of the great officers of the Roman Republic had descended to the municipal magistrates, such as, indeed, the Roman consuls really were, and in some cases was kept up to the French Revolution and Code Napoleon.* Consul-Judge was therefore a natural term, and the transition to Foreign Consul was easy.

The right of appointing foreign consuls soon passed from the merchant communities to their governments; the Hanse Towns and England saw the advantage of these officers, and before long it became a regular practice for one government to appoint consuls to act in the dominions of another. The first English consul that we know of was Leonardo Strozzi, an Italian by birth, appointed to Pisa in 1175.

The powers of consuls were by degrees enlarged, restricted, and defined. Gradually the legal jurisdiction over disputes was withdrawn in nearly all except non-Christian countries, although for questions

* Other civic appellations were also in Roman style, and the inscription S. P. Q. L. appears on many of the public buildings in Lyons.

of wills and intestate property this jurisdiction has been still in some measure kept. With regard to maritime matters the case is different, and here, for the purpose of avoiding protracted disputes in the courts of the country, the consuls are still allowed large jurisdiction. This is nowadays in most cases regulated by special treaties.

Our own country, by means of consular treaties and conventions, has had the greatest influence in settling and determining the rights, powers, and immunities of consuls, and as nearly all existing treaties, whether made by the United States or by foreign powers, are subsequent to the first publication of Wheaton's "Elements of International Law," the present status of consuls is very different from that laid down by Wheaton. Perhaps the best exposition of the subject will be found in the "Commentary on Wheaton" by the late William Beach Lawrence.*

Nevertheless our Government has always maintained that consuls had rights and powers coming to them from the common law of nations, though subject to abridgment by Congress and to enlargement by treaties. Consuls were recognized as existing of-

* *Commentaire sur les Éléments du droit international et sur l'histoire des progrès du droit, des gens de Henry Wheaton*, par William Beach Lawrence. 4 vols. Leipzig, 1868–1880. This excellent work was based on the author's notes to his edition of Wheaton, greatly expanded. Unfortunately it extends only to the end of Part II., Chap. ii.

ficers by the Constitution; the first detailed law regarding them was in 1792, and before this Washington had appointed and commissioned seventeen consuls and five vice-consuls.

The law of 1792, which was to carry into effect our Consular Treaty with France, did not create or even regulate the consular system, it merely recognized its existence, in imposing certain specified duties upon consular officers. Two previous and several subsequent statutes did nothing more. The consular service was left entirely to the discretion of the State Department, which in 1816 made a fruitless effort to have fixed salaries, at least for the chief consular officers. There was another similar attempt in 1833, but nothing was done in this way until the law of 1856, by which our consular system is still in the main regulated, though various changes of minor importance have been made since that time. A similar law had already been passed in 1855; but as by this the President was ordered to make new appointments to all the consulates, which were thereby declared vacant, this brought about a constitutional question of the President's prerogative, which was set forth in two opinions of Attorney-General Caleb Cushing, of May 25, and June 2, 1855. The objections were obviated in the law of the following year. A similar conflict arose about the Appropriations Act of 1876, between President Grant and Congress. In

the law of 1856 there was the first attempt to establish a regular consular corps, by the appointment of consular pupils, but this section was abrogated by the Appropriations Act of the same year. The matter was again brought to the attention of Congress in 1864 by Mr. Seward, and the President was authorized to appoint thirteen consular clerks, not removable except for cause to be stated to Congress. This has never gone further.

The main provisions of the act of 1856 were to give many of the consuls fixed salaries, and to classify them so that those embraced in a certain schedule, known as Schedule B, receive a fixed salary and are not allowed to transact business; those in another schedule, known as Schedule C, receive a small fixed salary and are allowed to transact business for their own profit; and all other consuls (some of them now important ones), who are compensated by the fees they receive are also allowed to do business. Since then, by the law of 1874, the salaried consulates have been arranged in seven classes, according to the amount of salary, from $4,000 to $1,000; but so long as there is no fixed rule of promotion from one grade to another this classification is meaningless. It in no way corresponds to the importance of the posts.

In 1868 the Joint Select Committee on Retrenchment proposed a regular graded consular system, based upon competitive examinations, and the report

of Senator Patterson presents strong reasons for this plan.*

Still more lately, in pursuance of a provision in the Appropriations Act for 1882–3, Mr. Frelinghuysen took the opinions of the consular officers on the subject of reform, and made a report proposing various changes, and asking for a commission to study the subject with a view to remodelling the whole system.†

Consuls are in a certain way charged with watching over the execution of treaties, for they must protect any of their countrymen whose rights are invaded and must immediately bring to the attention of their government any such infringement. In general, they observe the movements of naval forces of all nations on the coast near the port in which they are placed; and it is their duty also to watch over the dignity of their own country in maintaining the rights of their flag. Not only are they obliged to give aid, advice, and assistance to the ships of their commercial marine; but they should, in their correspondence with their Government, report all events touching the navigation, the various changes in the commerce of the countries where they live, and especially anything touching the special commerce with the country

* Senate Report, No. 154, 40th Congress, 2d Session.

† The report is dated March 20, 1884, with a supplement of January 5, 1885, 48th Congress, 1st Session, H. R. Ex. Doc., No. 121; 48th Congress, 2d Session, H. R. Ex. Doc., No. 65.

which sends them. In fine, they are bound to keep pace with the state and progress of manufactures, the rise of new branches of industry, and, in general, the increase or diminution of the public wealth, taking especial care to be well acquainted with all matters where other countries may gain advantage over their own. They are given a sort of police jurisdiction over the commercial vessels of their own country; they are generally charged with the duty of investigating shipwrecks and saving property from the wrecked or stranded vessels, with all disputes between captains and sailors, with arresting deserters, and with sending back shipwrecked or discharged seamen. In time of war their duties in these respects are still more important, for they are obliged, so far as either international law, special treaties, or the laws of the country will permit them, to protect at all hazard the commercial and naval interests of their country against arbitrary acts, whether committed by the country to which they are sent or by the nation at war with it. On the death of one of their countrymen they, in general, take possession of his effects, and in case of property left in the country, manage, keep, and dispose of it for the benefit of the heirs. They are authorized, besides, to perform notarial duties of all kinds, and in most cases they are the only authorities who can validate legal instruments between citizens of their country or others to be used at home.

In addition to the general duties of a consul various special duties are imposed on American consuls by our tariff system, which do not generally exist in the services of other countries. It is necessary for our consuls to verify in triplicate every invoice of goods sent to the United States. Not only is the consul obliged to take the oath or statement of the manufacturer or exporter, but he is expected to have a special knowledge of the trade of the place and of the actual value of the goods, so that he can control the statements made to him; for our system does not accept the valuations of goods always at the actual price paid for them, but at the market value of the place where they are manufactured or chiefly sold. The consul is in many cases expected to have in his office samples of the merchandise generally shipped, and to be in a position to discover any undervaluation, fraud, or collusion. These duties are by no means light ones. In a large commercial centre many thousand invoices are signed every year. For each of these he must appose his signature in triplicate to two papers, with his official seal, must fasten the papers together in such a way as to prevent fraud, and in case of depreciation of currency must add still another certificate as to the value of money. Of these triplicate invoices one is given to the shipper, one is retained in the consulate as proof, and the third is sent to the collector of the port to which the goods are forwarded, marked also

in an explanatory list. This is not all. The consul must keep an accurate register of all these invoices, with date, number, fee, and the value of the goods, called an "Invoice Book;" he must keep another separate register of fees, and, in some cases still a third. While each invoice imposes on the consul such a duty, the amount of fees received, in general $2.50 for each invoice, does not in all cases correctly show the value of the commerce or the importance of the consulate; for while in many places there is a very great number of small invoices, in others whole cargoes are sent under a single invoice, and the amount of fees taken in is, therefore, no exact measure of the importance of the consul's services to the Treasury. Besides this, in certain cases he is bound to take notice and prepare official papers with regard to the imports from the United States to the place where he is stationed; for certain articles, such as petroleum casks, shooks, or pieces of wood used for orange-boxes, and grain bags, are allowed to return free to the United States on proof of their once being exported thence.

Besides keeping a number of official records, registers, and fee-books, carrying on his ordinary correspondence with the Department of State, in carefully prescribed forms, relating to the business of his office, and reporting anything of interest of a commercial nature to the Government, the consul is obliged to make quarterly, semi-annual, and annual returns both to the

State Department and to the Treasury. He must, for instance, at the end of each quarter, give a digest of the invoices verified by him during that period, a record of the arrivals and departures of American vessels—a return nowadays exceedingly simple—a register of deceased American citizens, a record of his notarial services or unofficial fees, a summary of the whole consular business, and, in case the consul has extra-territorial jurisdiction, a return of the business of the consular court, and also a record of his official fees. The semi-annual and annual returns embrace besides that a list of passports issued or visaed, a list of persons to whom protection may have been given in non-Christian countries, reports of the estates of deceased citizens, names of persons married in the consulate, a correct list of fees received, a list of despatches written to the Department during the year, a list of marriages of American citizens within his jurisdiction, and a register of American residents. He must send to the Treasury, at the end of every quarter, a record of the Treasury fees, to which he is obliged to take an oath before some magistrate, for, although a person of confidence, his word or official statement is not believed by the Treasury without an oath; a list of seamen shipped, discharged, or deceased at the consulate; a statement of all relief given to seamen; a summary of consular business; and three other reports, relative to seamen, extra wages, and hospital dues. He must send also to the

Treasury an account current of the receipts and expenditures of the consulate; and his salary account, in all cases in duplicate and accompanied by various certificates and vouchers. His account for rent and miscellaneous expenses goes not to the Treasury but to the Department of State. The consular accounts, after passing through the Bureau of Accounts at the Department of State, are, with marks of approval or disapproval, forwarded to the Fifth Auditor of the Treasury Department, where they are subjected to a careful examination, the least error or overcharge of any kind being noted, and are then passed on to the First Comptroller of the Treasury, who finally decides whether they are to be admitted. Although nearly all other officers of the Government may receive their pay at the expiration of every month, a consul cannot be paid before the termination of his quarter, and he may then, in case he has not received official fees sufficient, draw upon the Secretary of the Treasury for the amount due him. It is a little difficult to see what other system could be adopted, although diplomatic officials draw, not on the Secretary of the Treasury, but on an account opened to their credit with the bankers of the State Department in London. The system of drawing drafts on the Secretary of the Treasury perhaps prevents loss to the Government in one way; but as in very many cases in drawing upon the United States there is a loss

on exchange, this loss, in some cases a large one, falls fortunately on the Government and not on the consul. This makes an addition to the general estimates, and is especially provided for in the appropriations. At the same time a consul who, although his duties may be very important to the interests of the Government, verifies few invoices, and therefore receives few fees, is, unless he has private means, obliged to live upon credit for the first three months after his arrival at his post, and even then may sometimes find it difficult to meet with a banker or merchant willing to cash his drafts at any moderate rate.

In shipping-ports consuls of the United States have to inspect the manifests of vessels leaving for the United States, to see that they are in accordance with the tariff laws. They must send frequent reports as to the state of health in their district, especially if there be any epidemic disease; must inspect vessels in such cases, and issue or countersign bills of health. They must prevent, by every means in their power, the shipment of paupers or criminals as emigrants to the United States, and promptly report such cases; must in like way obstruct the emigration of Mormon converts, and must report all violations of the passenger laws. Consuls must report, besides, all new inventions and discoveries, all improvements in agriculture and manufactures, all information relative to new light-houses, buoys, beacons and shoals, and must be vigi-

lant with regard to the importation of neat cattle and hides, as well as of rags, lest disease may be introduced into the United States.

Consuls are obliged to send annual reports through the Consul-General, containing full statistics and statements respecting the trade and navigation in their districts, arranged in tabulated forms, and from these each Consul-General must send

"in duplicate, each year, a full report upon the trade and industry of the country under his supervision, arranged and systematized so as to show, 1st, its agriculture; 2d, its manufactures; 3d, the condition of its mines; 4th, its fisheries; 5th, the products of its forests; 6th, its commerce, showing (*a*) the number of vessels, domestic and foreign, entered and cleared, and the amount of tonnage, (*b*) the amount and value of imports and duties thereon, (*c*) the amount and value of exports, (*d*) its trade with the United States; 7th, its revenues, separating customs from other sources of revenue; 8th, such miscellaneous subjects as may appear of importance, such as new commercial treaties, statements of population, emigration, price of food, wages of labor, conditions of the people, peculiarities in business and habits, and all points of interest that may serve to further American trade and general information.

"All consuls will transmit, as soon as they are published, statements of all changes in the commercial systems of the governments to which they are accredited, copies of all commercial treaties, regulations, light-house notices, revenue laws, acts and regulations respecting warehouses, tonnage duties, and port dues; all tariffs and modifications thereof, and all enactments, decrees, royal orders, or proclamations which in any manner affect the commercial, agricultural, mining, or other important interests of the United States.

"The trade reports of consular officers should specify the articles of import and export, the countries which supply the former and receive the latter, the comparative increase or decrease in the amounts of the same, and the causes in both cases for either; the general regulations of trade and their effects, the average market prices within the year of the staples of export, and the average rates or freight to the United States. They should also designate the articles, if any, prohibited from importation into their consular districts, whether from the place of their growth or production or from other places, specifying what changes have occurred since their last reports; and also all privileges or restrictions thereon, if any, and to what vessels and in what manner they apply, and all differences in duties on articles imported in foreign or national vessels; all tonnage duties and other port dues, and all port, warehouse, and sanitary regulations, and those relating to entry and clearance, where such exist and have been modified or enlarged since their last reports. They should also communicate detailed information in regard to the employment in their consular districts of the capital, if any, of citizens of the United States, whether employed in industrial, agricultural, scientific, or commercial pursuits. They should also transmit tabular or other statements touching the consumption of the products of the United States as well as of other countries; the amount of these articles imported into their districts in American vessels, and the amount of foreign tonnage employed in the trade.

"Consular officers should from time to time communicate any useful and interesting information relating to agriculture, manufactures, labor, wages, population, and public works. In all that relates to scientific discoveries, to progress in the useful arts, and to general statistics in foreign countries, they should communicate freely and frequently with the Department. They should be careful to note all events occurring

within their several districts which affect, favorably or otherwise, the navigation and commerce of the United States; the establishment of new branches of industry, the increase or decline of those before established, and the demands for new articles of the products or manufactures of the United States. They should also promptly advise the Department in all matters calculated to benefit our commerce or other interests, and as to all means for removing any impediments that obstruct their development.

"Consular officers will transmit, quarterly, information on the following points to the Secretary of State, not only in reference to the trade of the place of their residence, but that of the neighboring country or towns with which it may be connected commercially, or through which their merchandise may be shipped to the United States: 1st. The usual terms on which merchandise is bought and sold, whether on credit or for cash. The usual discounts allowed, either from custom or in consideration of cash payment, or from other cause; whether such discounts are uniform, and, if not, whether they vary in the same, or only on different descriptions of merchandise; and whether such discounts, or any of them, are regarded as a bonus or gratuity to the buyer for his benefit; whether he purchases for himself or ships merchandise to order and for account of others. 2d. The bounties allowed on articles exported, and for what reason, and under what circumstances; whether they are the same on exports by national or foreign vessels; if not, the difference; the rates of such bounties, and how estimated, whether on weight, measure, gauge, price, or value. 3d. The customary charge of commissions for purchasing and shipping goods of different descriptions; the usual brokerage on the purchase or sale of merchandise; whether it is paid by the buyer or seller, or by both. 4th. The usual and customary expenses in detail attending the purchase and shipment of merchandise, including commissions, brokerage,

export duty, dock, trade, or city dues, lighterage, porterage, labor, cost of packages, covering or embaling, cooperage, gauging, weighing, wharfage, and local imposts or taxes of any kind; which of the foregoing, or other items, are usually included in the price of the article, or become a separate charge to be paid by the shipper or purchaser.

"In the case of merchandise purchased at the interior places, or in other countries having no shipping ports of their own, for shipment to foreign countries, through the ports of the consulate, consuls will report the customary expenses attending the transportation from such interior places or countries to the port of shipment, including all transits, exports, or import frontier duty, and every other charge up to the arrival at such port, and the ordinary expenses attending the shipment thereof.

"The duties of consular officers in respect to the development of trade with the United States are of special interest and importance. The condition of the products and manufactures of this country is such that very many articles of growth and manufacture can be exported in largely increased quantities, and the Department of State has taken particular interest in all efforts and measures for the promotion of our export trade. The agency of consular officers in this direction is of the highest value, and their efficient services hitherto have met with deserved recognition. It is expected that they should devote special attention to the methods by which trade with the United States can be most effectively fostered and enlarged, and by which new branches of industry can be introduced within their districts. To this end they should from time to time advise the Department of the demand for different kinds of products and manufactured articles, and whether they are of the character which it is probable the industries of the United States can supply; and also of any products of the country in which trade with the United States may be acquired

or increased, either by legislation, executive action, or by commercial enterprise." *

I have preferred to quote the exact text of the "Consular Regulations," as further condensation seems difficult. Reports of a similar character have to be made also to the Secretary of the Treasury.

"It is the duty of every consular officer to furnish to the Secretary of the Treasury, as often as shall be required, the prices-current of all articles of merchandise usually exported to the United States from the port or place in which he shall be located. They are also requested to transmit, at least once a month, if opportunity offers, to the Secretary of State and to the Comptroller of the Treasury, the rates of exchange, and also a statement of the rates at which any depreciated currency of the country in which they reside is computed in United States or Spanish dollars, or in silver or gold coins of other countries, observing in all cases of an estimate of the value of the currency in such foreign coins that their weight and standard should be made known to the Department.

"Consular officers will also report monthly to the Treasury Department the rates of exchange prevailing between the ports or places at which they reside and the following places, to wit, London, Paris, Amsterdam, and Hamburg; also New York and other principal ports in the United States; and they will keep the Department regularly and fully advised of the course and progress of trade from the several ports of their consulates to the United States.

"Consular officers will forward regularly, and as often as practicable, directly to the general appraisers residing at New York, Boston, Philadelphia, Baltimore, and San Francisco, such prices-current, manufacturers' statements of prices, or

* United States Consular Regulation, par. 556, 559–563.

merchants' printed circulars of prices, and such other general information as may be useful to appraisers in the discharge of their duties. They will include in their several reports, in detail, information on any other points which they may think proper, in order to an ascertainment of the value of merchandise forwarded to the United States, and the assessment of the legal duties, forwarding any printed or other documents which they may think desirable that the Department should possess." *

The relations of consuls to the Treasury have several times led that Department to claim a jurisdiction over the consular system. In 1872, Mr. Keim, who had been sent out as a Treasury agent for the examination of consular affairs, recommended the withdrawal of all control over consular officers from the State Department and its transfer to the Treasury, and even prepared a bill for that purpose. Many of his judgments and minor suggestions were very sensible.†

But besides all these purely commercial and clerical duties, consuls have, in non-Christian countries, where it would be unsafe to leave the lives and the property of foreigners to the discretion of a native tribunal, a civil and criminal jurisdiction, which it is necessary to explain in some detail.

After the capture of Constantinople by the Turks

* U. S. Consular Regulations, 571–573.

† A Report to the Hon. George S. Boutwell, Secretary of the Treasury, upon the Condition of the Consular Service. 1872.

in 1453, owing to the ignorance of Christian usages, and because it was found more convenient that the Christians should in a measure govern themselves, and that their governors should be held responsible for their conduct, various privileges of self-government were granted to the native Christians. Genoa and Venice having at that time mercantile establishments on the Bosphorus, such privileges were extended also to them. Subsequently, by a treaty made in 1535 between King Francis I. and the Sultan Suleiman I., similar privileges were given to the French, and through them to all the Franks. These privileges were subsequently enlarged and confirmed, especially by the treaty of Mahmûd I. with Louis XV., in 1740, which is the basis of all the present arrangements. The English, from whom we in part derived our rights, secured their privileges by a treaty in 1675 between Mahmûd IV. and Charles II. Other nations gradually followed these examples.

These privileges are in general called *Capitulations;* not in the sense now usual of a surrender of right, for they were a free grant, but in the old sense of an agreement under heads and articles, "Capitula." The word was not unusual in such a sense in old French treaties and conventions, for we read of a "Capitulation and contract of marriage" between Dom Pedro of Portugal and the Princess Marie of Savoy. The basis of these privileges was what is now commonly

termed Extra-territoriality, that is, that the citizens and subjects of foreign powers shall between themselves have the same rights and privileges, especially in the settlement of their disputes, as though they were in their own country; and that this distinction shall be so far observed in case of criminal procedure, where they have offended the laws of the land or have disputes with the subjects of the country, that they shall not be treated differently (*i.e.*, more unfavorably) from the subjects of the country, and shall always have the protection of their representatives to see that absolute justice is done.

The United States acquired these rights of extra-territoriality partly from having enjoyed them while still British colonies, but mainly from our treaty concluded with Turkey in 1830. By the first article it was agreed that the merchants of both countries should be placed on an equality with those of all powers in the country respectively; and by the fourth article it was agreed that,

"If litigations and disputes should arise between the subjects of the supreme power and citizens of the United States, the parties shall not be held, nor shall judgment be pronounced unless the American dragoman be present. Citizens of the United States of America, even when they may have committed some offence, shall not be arrested and put in prison by the local authorities, but they shall be tried by their minister or consul, and punished according to their offence, following in this respect the usage observed toward other Franks."

A dispute arose between Turkey and the United States as to the proper meaning of this article. As several of the treaties between Turkey and foreign powers permitted foreign subjects to be tried by a mixed court, or even by a Turkish court in the presence of a foreign representative, the Porte held that the United States should conform to this. The Turks also insisted that our translation of the treaty was incorrect; and it seems that Captain Porter, our first minister at Constantinople, had signed an agreement by which he recognized the Turkish text of the treaty as the binding one. They said that the phrase "they shall not be arrested and put into prison by the local authorities, but they shall be tried by their minister or consul," was not in the original treaty. Our Government maintained the contrary view; and a number of independent translations from the text of the original proved that we were in the right. In addition to this, similar stipulations to those of this fourth article had been put in the Turkish treaties with Greece, the Hanse Towns, Belgium, Portugal, and Sweden. We, therefore, insisted on our interpretation, and the result was that in one or two cases persons escaped trial. Both Governments still maintain their ground, and this dispute has never been settled.

The United States have similar treaties granting extra-territorial rights with Borneo, China, Japan, Madagascar, Morocco, Muscat, Persia, Samoa, Siam,

and Tripoli; that is, in general with all non-Christian countries. We have treaties of the same nature with Algeria and Tunis, but these countries being now occupied by France, and we having agreed to give up our extra-territorial rights since the establishment of fair tribunals, they are no longer of effect. There was for a long time a question whether these rights existed in Roumania. As to Serbia there was no doubt. But in both these countries such rights have been given up through the conclusion of consular treaties. Many of these treaties for jurisdiction are far more full and explicit than our treaty with Turkey.

There was, however, no law of Congress permitting the exercise by consuls of these powers conferred by treaty until the act of August 11, 1848, which was subsequently extended and amended by those of June 22, 1860, and July 1, 1870. By these laws consuls are authorized to arraign and try all citizens of the United States charged with offences committed in such countries, to sentence them to fine, imprisonment, and even death, and to execute such sentences. They have authority also to try and determine all civil causes arising between citizens of the United States, or between Americans and other foreigners, sitting in some cases alone, and in others with assessors. They are given many other judicial powers, including marriage, divorce, the custody of property, the probate of wills, etc. Similar powers are vested

in ministers, who can also hear appeals from the consular courts; and it is only in Japan and China, when the matter in dispute exceeds two thousand five hundred dollars, that there can be a further appeal to the Circuit Court of the United States for the District of California. These courts are governed by the laws of the United States, but as the Federal legislation will by no means cover all the questions presented, the common law and the provisions of equity and admiralty have been extended to supplement it. Different regulations for procedure have been drawn up in the different countries, and our whole system is in a confused and contradictory condition, by no means furnishing the same safeguards for the administration of justice as are afforded by the French, English, or Italian systems. The English have regularly constituted courts, both of original and appellate jurisdiction, and jury trial, whenever possible, in criminal cases. The French have besides, an appeal to the court of Aix in Provence, the judgment of which may be again reviewed by the *Cour de Cassation.*

Some recent cases of failure of justice, and especially two trials, one in Japan and one in Egypt, where men were condemned to death, without a jury, under peculiar circumstances, drew public attention to the defects of our legislation. A report was made on the subject by the Secretary of State in 1882, and an excellent and carefully drafted bill for the reorgan-

ization of the whole system of consular courts was passed by the Senate, mainly through the efforts of Mr. Pendleton, who devoted to the subject much care and attention. This bill failed to pass in the House of Representatives at the last session (1884–85), chiefly because it provided for a number of new appointments, which the dominant party did not wish to have made by a Republican administration; no one seemed to read it through and to notice that it was only to take effect six months after a code of practice had been prepared by the Secretary of State and the Attorney-General, and had been approved by the President. This bill provided, in brief, for the reorganization and limitation of the consular courts, for the establishment of district courts, and of a supreme court, in China and Japan, and for a right of appeal in other countries to the Supreme Court in Japan, or to the United States Court for the Eastern District of New York. In order to supply proper clerks, the number of consular clerks was increased to twenty-five. Measures were taken for the introduction of the jury system, and sentences of death must be approved by the President.

The need of some such reform is urgent, and President Cleveland directed the attention of Congress to it again, in his message of December 8, 1885.*

* The whole subject of consular jurisdiction is set forth in Lawrence's *Commentaire sur Wheaton*, vol. iv. See also the

Of course, not all consuls have to perform all the duties which have just been enumerated. The circumstances of each post are different. The following examples will, however, show that the work of consular officers has not been exaggerated. Take, for instance, the duties of the Consul-General at Shanghai.

"1st. He has supervisory control over all consulates in China. 2d. Because of the distance from the legation at Peking, the insufficient means of communication, especially in winter, and the peculiar powers of the local government, he has often important semi-diplomatic duties to perform, requiring delicacy and tact. 3d. With the other consular representatives he participates in the municipal government of the foreign settlement with a very considerable population, and containing much valuable property, both real and personal. 4th. He is a judge trying civil causes in which Americans are defendants, and trying them for crimes sometimes carrying the extreme penalty of the law. He also has charge of the jail in which American prisoners are confined. In his judicial capacity he is judge of a criminal court, of a court of probate and divorce, of an equity and of a nisi-prius court. 5th. He is United States postmaster, handling all the mails arriving at Shanghai for citizens of this country, either officials or private individuals. 6th. He performs the duties of a seaport consulate, viz., has care of American shipping, guarding the interests of master, crew, and owners; he protects the revenue of his

Letter of Mr. Frelinghuysen to Senator Windom, of April 29, 1882, Senate Mis. Doc., No. 89, 47th Congress, 1st Session; and especially, for the Turkish Capitulations, the excellent report of Mr. Edward A. Vandyck, Senate Ex. Doc., No. 3, Special Session (1881), and Senate Ex. Doc., No. 87, 47th Congress, 1st Session.

Government and watches and strives to increase the export trade." *

At Matamoras the Consul-General, in addition to the ordinary consular duties, has to try to prevent smuggling along the line of the Rio Grande, and therefore to exercise a supervision of the bonded imports, and to maintain local diplomatic relations in order to secure mutual good-will, and the better enforcement of the laws on the frontier. His subordinates to the north have to watch not only smuggling, but the movements of the Indians, and to report promptly on this subject. The work of the Consul-General at Matamoras, like that of most of the consuls in Mexico, has greatly increased during the last few years, owing to the millions of American capital now invested in Mexico, and to the number of American citizens resident there. It is necessary to protect American interests not only by watching against any injustice to them, but by giving reasonable aid and advice to persons intending to engage in Mexican enterprises. The persons of Americans have to be protected, unfortunately too frequently, from the suspicious and ignorant local authorities, who arrest and imprison them on very slight pretexts. To accomplish this the consular officer at Matamoras should have a good knowledge of international law, and the

* Report of the Secretary of State, April 26, 1884, H. R. Ex. Doc., No. 146, 48th Congress, 1st Session.

rules of extradition, as well as of the municipal law of the United States, Mexico, and of the State of Texas. And all this is expected for an annual salary of $2,000, and an allowance of $400, for office rent!

At Palermo, a city of over two hundred thousand inhabitants, our consul receives a salary of $2,000, with an allowance of $400 for rent and $400 for clerk hire. The fees of the office in the fiscal year of 1883–84, amounted to over eleven thousand dollars, which, with the exception of $839, for ships' paper, etc., and $214 for miscellaneous, was all for the verification of invoices, of which there were nearly four thousand, averaging about thirty a day during the busy season. The exports, which amount to about five million dollars, consist chiefly of oranges and lemons, with a considerable amount of sulphur, salt, and wine. Here the work of the consul is especially difficult, because the small dealers frequently combine to send one large instead of several smaller invoices—a practice forbidden by our revenue laws; and owing to the system of secrecy and terrorism prevalent in business circles in Sicily, and to the refusal to give information, it is very hard to ascertain and prevent this. The four agencies of the consulate, at Carini, Girgenti, Marsala, and Trapani, cause additional labor, and a single case of injustice, or of a dispute between master and men of an American vessel in any of these ports, has required a journey and the loss of several days to adjust. Dur-

ing the last two years the consul has had to be very vigilant with regard to bills of health, lest cholera might be imported into America. In 1884 there were two hundred and twenty-eight American travellers who visited the consulate (and the number is yearly increasing); that is, more than one a day during the travelling season; and as brigandage is still of occasional occurrence, and a passport law is at times enforced to hinder emigration, each of these travellers required a certain amount of attention. The frequent visits of American ships-of-war add greatly to the consul's social duties, as well as to his actual official work, for he must then receive the mail for these ships and take measures to arrest deserters. His British colleague, who has no duties with regard to invoices, has a salary of $3,000, allowances to the amount of $1,000, and a paid vice-consul as well as clerks.

Consular officers are allowed by international law in general, and by special treaties with most countries, except England, certain privileges; for example, the inviolability of the archives and papers of the consulate, as well as of the consular office and dwelling; freedom from arrest; exemption from any obligation to appear as a witness—a consul's testimony being usually taken at his office; exemption from taxation, from the quartering of soldiers, from military or other public service; the privilege of corresponding with the local authorities in case of infraction of

treaties; the use of the national arms and flag on offices and dwellings; the power of taking depositions; jurisdiction over disputes between masters, officers, and crews of commercial ships; the right to reclaim deserters; the power to adjust damages suffered at sea and in matters of wrecks and salvage; the power of administering the estates of deceased fellow-citizens; the right of applying for the extradition of fugitive criminals. I have excepted England in order to mark a noteworthy fact, that the English government, while willing, under the "most-favored-nation" clause, to accept all privileges and immunities given in such matters to the consuls of the most favored nation in other countries, has never been willing to make a special consular treaty, on the ground that Parliament has never conferred upon the government the authority to make such a treaty, and that a special act of Parliament would be necessary to except foreign consuls from British jurisdiction. Promises have been made to most countries at various times that a bill to this effect would speedily be introduced into Parliament; but the proper or convenient time has never seemed to come. Foreign consuls, therefore, in Great Britain, are treated exactly as British subjects, and have no privileges whatever except such as the courtesy of the Foreign Office and of the Board of Trade chooses temporarily to permit them. It required even a strong represen-

tation to the British government to secure American consuls from paying an income tax to the British treasury on their official salaries. The property and archives of the French Consulate-General at London were at one time sold at public auction for a house tax which had not been paid by the proprietor of the house which contained the consular office. At Manchester, in 1857, the consular archives were seized for a debt of the American consul, who was absent at the time, and Mr. Dallas, the American minister, paid the amount claimed in order to avoid a sale.

With all the duties which have been enumerated, and with their corresponding privileges, we may easily see what should be the qualifications of a consular officer. Allow me to quote in this connection the words of Prince Talleyrand in speaking of Count Reinhard, who, after having been French Minister Plenipotentiary at Hamburg and Florence, subsequently filled the office of Consul-General at Milan, of Commissary General of Commercial Relations in Moldavia, and again of Minister at Cassel, Frankfort, and at Dresden. He said:

"After having been a skilful minister how many things one has to know besides to be a good consul; for the duties of a consul are infinitely varied. They are of a kind very different from those of other agents of foreign affairs; they demand a mass of practical knowledge for which a special education is necessary."

Under our existing laws no qualifications whatever are required except the good-will of the appointing power. It is not even necessary to know how to write good English. Let us see for a moment what is required in other countries. According to existing regulations any one appointed to the British consular service must be subjected to an examination showing that he has an accurate knowledge of the English language; that he can write and speak French correctly and fluently, that he has a sufficient knowledge of the current language, as far as commerce is concerned, at the port to which he is to be appointed to reside, so as to enable him to communicate directly with the authorities and natives of the place, a knowledge of the German language being taken to meet this requirement for the ports of Northern Europe, of the Spanish or Portuguese language, as may be determined, for ports in Spain, Portugal, Mexico, Central and South America, and of the Italian language for the ports in Italy, Greece, Turkey, Egypt, and the Black Sea and Mediterranean; a sufficient knowledge of British mercantile and commercial law to enable him to deal with questions arising between British shipowners and shipmasters and seamen; a sufficient knowledge of arithmetic for the nature of the duties which he will be required to perform in drawing up commercial tables and reports. He is also required, if practicable, to remain in the Foreign

Office for at least three months, to become acquainted with the forms of business as carried on there. These are only the scholastic qualifications, and he should possess, in addition, various special qualifications and attainments. He should be courteous and prudent, free from passion, and firm without prejudice, with a well-balanced mind, versed in the law of nations, and should, subsequently, make himself thoroughly acquainted with the laws, municipal ordinances, and tariffs of the place to which he is appointed.*

The requirements in France for admission to the consular service are that the candidate must be French, between twenty and twenty-five years of age; must have a diploma as bachelor of arts, science, or laws, or must have graduated at the École des Chartes, the Superior Normal School, the Polytechnic School, the School of Mines, the École des Ponts et Chaussées, the School of Arts and Manufactures, the School of Forestry, or at the Special Military School, or the Naval School; or must hold the commission of an officer in the active army or navy. He must then pass an examination on: 1, The constitutional, judicial, and administrative organization of France and of foreign countries; 2, general principles of public and

* Specimens of the English examination papers for the Consular and Diplomatic Services and the Foreign Office are printed at the end of the Foreign Office List, and show the thorough nature of the test.

private international law; 3, commercial and maritime law; 4, the history of treaties from the Congress of Westphalia to the Congress of Berlin, and political and commercial geography; 5, the elements of political economy; 6, in English or German. The examination is both written and oral, and includes the writing of a thesis. After three years' service either in the Foreign Office or abroad, the candidate must pass another examination, both written and oral; if for the diplomatic career, in English, German, and contemporary diplomatic history; if for the consular career, in English, German, or Spanish, commercial geography, and the customs legislation of France and other countries. On passing this examination he is appointed either Third Secretary of Legation or Assistant Consul (Consul Suppléant).*

The Belgian, the Italian, and indeed the systems of nearly all nations require special examinations and special knowledge on the part of persons appointed to consular posts. In most cases these begin at the very bottom of the ladder as clerks, or even consular pupils, and are only promoted after years of service and experience. The Austrian consular service in the East is remarkably good, and in that nearly every member has passed through the school for Oriental languages at Vi-

* The most recent French regulations will be found in the Appendix to vol. ii. of the *Cours de Droit diplomatique* of P. Pradier-Fodéré. Paris, 1881.

enna, and knows two or three of the languages spoken in the country to which he is sent, always Turkish, generally Greek, and sometimes Persian in addition.

There are three other important qualifications—of a negative character—for a good consul, which the actual experience of all nations has shown to be very necessary. Consuls should not be merchants; they should not be unpaid; and they should not be subjects, or even natives, of the country where they officially reside.

At the beginning of our Government we, like most other nations, started by appointing unpaid consuls from among American merchants resident abroad; or, if they were sent from America, by allowing them to enter into business as an equivalent for salary. This was found to work badly; and even as far back as 1816, the State Department proposed to Congress to pay the more important consular officers in Europe fixed salaries. No change of any importance was made, however, for many years. The consuls received the fees of their office, and in places where there was much to do these fees amounted to a large sum. In the consular reorganization in 1856, fixed salaries were given to a large number of consuls, while others were allowed to retain, in lieu of salaries, the fees of their offices. This having given rise to abuses, the fees in certain places amounting to $10,000, $25,000, and even higher, a law was passed requiring consuls to account

for all their fees to the Treasury, retaining not more than $2,500. Where there were consular agents a certain additional sum was allowed from the receipts of each agent, besides the payments of the agent himself. Thus the matter stands now. Some consuls receive a salary, others receive their salaries by means of fees. One objection to the fee system is that while the feed consul is perhaps more careful of the business of his office, in order to receive his pay, the fees are oppressive upon commerce and navigation. In order to guard against the latter, a law has recently been passed remitting all fees upon navigation, although a round-about system has been adopted, by which the fees are charged against the Treasury, so that an account of them is taken. As far as trade itself is concerned, the Protectionists seem to approve of the exactions of fees, because it adds so much more to the cost of imported goods. The general tendency in our Government has been, where the fees of a consulate amount regularly to more than three thousand dollars, to fix a salary for the post. There is one bad result from estimating the importance of a consulate in this way. The more agreeable places are as a rule better paid; and disagreeable and unhealthy posts, where few fees are taken, but where the protection given to Americans is worth far more to us as a nation, than a saving in the collection of duties, are left with trifling fees. Other countries which have

carefully studied the needs of the consular service, and the use which this service is of to the merchants of the country, have, for the most part, adopted the system of salaried consulates.

When the consul is a merchant, he is more apt to look out for his own interests than either for the interests of the Government or for those of his fellow-citizens for whose protection he is appointed. He is likely to be engaged in that business which has the chief export trade to the United States; and as consul he has the power of becoming acquainted with the trade of other merchants exporting similar goods. In that way he generally uses his consular position and the knowledge derived in consequence of it, to benefit his own business, sometimes to the detriment of his countrymen who have embarked in similar enterprises. In 1884 the Secretary of State made a report to Congress on consular matters, and took strong grounds against the use of merchants as consuls.* Our laws have now so far forbidden this practice that it is only in the small posts where the fees are not enough to pay the salary of a consul that it is allowed. The English consular service was reorganized by Mr. Canning, when Foreign Minister, in 1825; and the more important consulates were filled by persons sent especially from England for that purpose. In 1835, an economically disposed

* H. R. Ex. Doc., No. 121, 48th Congress, 1st Session.

Parliament wishing to return to the old system, an inquiry was made, and the evidence was taken of many consuls, and of many persons formerly consuls, as well as of the leading merchants and chambers of commerce. The evidence was very strong against the practice of allowing consuls to engage in trade; and Mr. Canning's system was therefore retained. Similar inquiries were made by Belgium not many years ago, with the result that the privilege of engaging in trade was taken away from the chief consulates. This has worked so well that there is not the slightest disposition to return to the old system. Nevertheless, an opinion seems to be gaining ground in this country that it would be greatly to the interests of our export trade if our consuls were merchants in active business. Before any change in a retrograde sense should be made, it would be important for us to take the evidence not only of our consuls but of our merchants and chambers of commerce on this subject, as well as to study the results of the practice on other nations.

It should be remarked that by usage in most countries merchant consuls, "commercial consuls," hold a distinctively lower rank than *consules missi*, *consuls envoyés*, or "diplomatic consuls," as they are often called. They are not held in the same respect or esteem, nor do they by treaty enjoy the same privileges as those not engaged in trade.

The inconveniences arising from having consular officers subjects or citizens of the country where they officially reside have been so great, that most countries, that admit the importance of the consular service, appoint no one but their own subjects in places of the slightest importance. The allegiance of a consul to his native government, and the duties following from it, constantly conflict with the duties which he owes to the country which has appointed him. Our laws now forbid a foreigner to be appointed consul of the United States, or at all events to be a salaried consul; and in our service there are very few exceptions to this rule. Very much the same objections which apply to a foreigner apply to a naturalized citizen of the United States, especially if he should be appointed consul in the place of his nativity. Among the foreigners who come to make their home in the United States there are many excellent and eminent men; but it cannot be denied that the majority of them come here in order to obtain better conditions of life than they have had at home. If they have gained sufficient position in this country to be appointed consuls, it shows that they have profited by their opportunities; but it by no means proves that they will be of service to the United States in an official position in the country of their birth. Old habits and connections, family relations, perhaps even the causes which led them to emigrate, bring them

back to the society which was once familiar to them; and this, as a general rule, is not the society which a consul should cultivate. Much as we disregard the prejudices of class distinction here, we are bound to regard them when we send persons abroad in an official position, not for the purpose of giving them a good place, but to render service to the United States. The complaint has not been unfrequently made by merchants in European towns, "Have you no Americans who are fit to be consuls here? Send any one you like, and we shall be glad to be polite to him and of service to him; but you cannot expect us, with our habits and traditions, to introduce to our families So and So, whom we have all known as occupying such and such a position in life." Apart from that, a naturalized citizen going back to the place of his birth is far more apt, owing to European laws, customs, and prejudices, to become involved in difficulties with the government of the country to which he is appointed, perhaps even for reasons preceding his emigration. It cannot be expected that a government will cheerfully accept as consul a man, no matter what his abilities may be, who has emigrated on account of political difficulties, or who has gone away in order to escape the conscription. Besides this, falling back, as has been said, into their old and accustomed family circle, consuls are apt in such cases to be surrounded with a set of persons who render it

disagreeable for an American even to go to the office on business.

Of late years, especially since the end of the war, when it has been considered necessary by politicians to cultivate the foreign-born voters, there has been a great tendency to appoint naturalized citizens as consuls; partly in order to please the body to which they belong, and partly because, speaking the language of the country, and presumably acquainted with its habits, they are thought to be more capable. In this way we have very recently seen a number of naturalized Germans appointed to the chief consulates of Germany and Austria, a Bohemian to Prague, an Italian to Leghorn, a Canadian to Toronto, a Nova Scotian to Halifax, Irishmen to Ireland, Scotchmen to Scotland, Frenchmen to France, etc. No person who has lived abroad or has had to do with consular business, whether as an official or a client, can for a moment doubt that the interests of the United States would be far better served had native-born citizens been appointed to these posts.

The accepted consular hierarchy in most countries is, beginning at the highest, Consul-General, Consul, Vice-Consul, and Consular-Agent. The American system varies somewhat from this. Our consuls-general are not only given that title to notice superiority in rank, but are charged with the supervision of all our consulates in the country in which they are es-

tablished. They have, however, within their own special jurisdiction, to perform exactly the same duties as a consul. With us vice-consuls are never independent officers subordinate to a consul, but simply persons who take the place of a consul when he is absent or ill, and who at other times exercise no functions. What corresponds to the vice-consuls in other countries is by us called a consular-agent, who does not have as complete powers as a vice-consul, and is generally appointed by, and is immediately under the control of, a consul, for places where business may have to be done but which he cannot himself attend to. For their conduct the consul is himself personally responsible. We have also deputy-consuls, appointed in places where much business is to be done, with all the powers of a consul for signing papers. The term commercial-agent is somewhat an anomaly. He is not recognized by international law as having any consular privileges, although the State Department has at times made an effort to secure such recognition in certain places where the governments were unwilling to allow the appointment of consuls and yet where the exportation to the United States was so great as to necessitate the presence of some one who could sign invoices. An officer of this kind was appointed simply as an agent for the Treasury. Few, if any, such places now exist; but the practice has grown on the Government of appointing

commercial-agents in places where a consul or vice-consul would be received, because such an appointment does not need confirmation by the Senate, and it enables the President to establish positions for a few years, and place in them persons whose names it might be awkward to send in for confirmation.

In a bill for the reorganization of the consular service which was proposed to Congress in 1884 by the State Department, consular-agents are generally abolished, and those officers are styled vice-consuls, as in other countries. This is easier for the Government, as in many places well-to-do merchants would be willing to accept the position of honorary unpaid vice-consul on account of the dignity, who refuse that of consular-agent as directly marking them as officers of inferior grade.

In the manufacturing districts of Germany and Great Britain it would perhaps be difficult to find either honorary vice-consuls or consular-agents willing to perform the work of certifying to invoices without pay. In these countries consular agencies are often multiplied without real necessity, except to increase the perquisites of the consuls, who are permitted to receive fees amounting to $1,000 from the agencies under their control. This brings our service into disrepute. There can, for instance, be no real need of a consular agent at Burtscheid, which practically forms part of Aix-la-Chapelle.

In 1864 Mr. Seward succeeded in inducing Congress to authorize the appointment of thirteen consular clerks, who "can be removed only for cause stated in writing and submitted to Congress." The idea that these clerks would form the nucleus of a consular service has proved illusory. These excellent and praiseworthy officials have generally refused promotion. They prefer a position of low rank and low pay ($1,000 per annum, and $1,200 after five years of continuous service), because it is permanent, knowing that if they were promoted to be consuls they could immediately be removed without cause, to make room for others. The number of consular clerks has never been increased above the original thirteen, and the necessary clerical assistance at most consulates is given by temporary hired clerks, who are in the service of the consulate but have no official position. The money to pay them is voted by Congress, but the points at which it is to be used are not left to the discretion of the Secretary of State, as should properly be the case, but are fixed in the law. In this way clerk-hire has been provided for places where it was quite unnecessary, because the consuls at these posts could bring political influence to bear in Congress, and other more important places have been left without allowances.

The consular service has grown greatly since 1856, because with the heavier customs duties imposed at

the beginning of our war, and the general increase of the commerce of our country, it has been necessary for the protection of the revenue to establish consulates in many inland manufacturing towns, rarely visited by Americans, where otherwise there would be no need of consular officers. This increase in number has been greater among feed than among salaried consulates, *i.e.*, among those which are maintained by the fees received, and for which no appropriations have to be asked from Congress. The salaries are in the main still fixed on the basis of the law of 1856, modified by that of 1874, which divided them into seven grades or classes.

It may be safely said that in most of the large, and especially the commercial towns of Europe, the cost of living has doubled, if not trebled, within the last thirty years. A very careful investigation on this subject was made by the British consuls, by order of their government, in 1873. Notwithstanding this advance of prices, the scale of salaries of American consuls has scarcely been changed in these thirty years, when men are still sent to Florence and Naples, expected to be competent to perform all the duties of the office, hold a respectable position in society, and pay proper attention to the numerous Americans visiting those places, on the sum of $1,500 a year, scarcely more than is paid to the subordinate employees of Congress.

We have, therefore, 20 consuls-general, with salaries varying from $2,000 up to $6,000, besides 14 diplomatic officials who have the functions of consuls-general; 146 salaried consuls, who are not allowed to engage in business, divided into six grades, according to the salary, from $1,500 to $4,000, with two exceptional cases at Liverpool and Hongkong, where the salary is $6,000 and $5,000 respectively; 22 consuls, with a salary of $1,000 only, who are allowed to engage in business; and 74 feed consuls, who are not prohibited from engaging in trade, and whose remuneration varies, but cannot exceed $2,500 per annum. As there is but one consul of Class I. at $4,000, and as all the consuls of Class II. at $3,500 are in China, except one at Callao, it may be presumed that $2,500 is considered by Congress high salary. The experience of every one who has ever been in the consular service, or who has lived abroad in a private capacity, shows that in most cases this is utterly insufficient. We have also 40 commercial agents, of whom 37 are paid by fees; 378 consular agents, also paid by fees to the amount of $1,000; and 13 consular clerks, a total of 707, without counting vice-consuls and deputy consuls, who act only in the absence or incapacity of their chief.

It is impossible, however, to judge of the receipts of a consul solely by his salary, or even by adding to that the sum of $1,000, which he is allowed to retain

from the receipts of the consular agencies under his control. He receives fees. These fees are of two kinds, official and non-official. The official fees, for all acts which he is required to do in his capacity as consul for governmental purposes, have to be strictly accounted for and paid back to the Government. The unofficial or notarial fees which he may receive for drawing papers or for witnessing signatures, as he may do from the notarial powers granted to his office, are retained by him. So also he retains his fees for taking testimony under a special rogatory commission of some American court. The amount of such fees is variable and can scarcely be estimated. In three or four places, where there are many resident Americans, or many persons who have property interests in America, which require the preparation and signature of legal papers, they are much greater than in smaller places. In London, Liverpool, Paris, Dresden, and Florence, for example, these fees add greatly to the consul's income as well as to his duties. In Rome they amounted in one year to about one thousand dollars, and in the next to not one hundred dollars. In very many consulates they would not average ten dollars a year. There being no fixed tariff for these notarial fees, they are irregular, and it is said that some consuls have charged as much as $5 for the acknowledgment of a signature, the fee for which in most of our States is only twenty-five cents. It would

be better for every one, and certainly better for the good repute of our service, if notarial duties were made, not permissive as at present, but obligatory upon consuls, and the fees were made official and all paid into the Treasury. Such a regulation should not, however, affect the remuneration for personal services rendered in drawing papers, wills, etc., and for taking testimony, which should, as now, remain to the consul personally. In many cases the consul is the only person who could render such services.

Most of the illegitimate, semi-legitimate, or irregular fees, by which consuls have sometimes added to their income, have been in one way or another abolished. The habit had grown up to regard as official fees only those which were set down in the official table sent from the State Department. For all new duties, whether imposed by the regulations of our own customs service, by the laws of individual states, or by the usages of a foreign country, the fees were fixed by the consul and were collected by him for his individual profit, because he was performing work entirely outside of his regular duties. Such were, for instance, immigrant certificates, certificates of the American origin of petroleum barrels, or grain-bags, cooperage certificates, etc. But most of these have either been abolished or made purely official, and the abolition of fees in connection with ships' papers has removed the temptation to collect illicit fees for expediting them.

Almost the only remnant of irregular fees seems to be a practice, prevalent in some consulates in England, with regard to the commissioner's fee for administering the oath to invoices, which is thought to be in some measure authorized by the words of the Consular Regulations, par. 467. It is customary in Great Britain to require the shipper to swear to the correctness of his invoices before a commissioner authorized to administer oaths, the consul himself having no such power. As the consul must be acquainted with the commissioner, in order to recognize his signature, and certify to his qualification, the necessities of business, and the convenience of merchants at large consulates, have compelled consuls to have a commissioner in attendance at the consulate during certain hours. As the legal fees of the commissioner are rather large, being generally three shillings and sixpence for each triplicate, or ten shillings and sixpence for each invoice, some consuls have, where it has been practicable, employed these commissioners on a fixed salary, and have thus been able to reduce the fees paid by the merchants by over one-half. If business should fall off below the estimate, the consul is personally bound to pay to the commissioner the difference between the fees taken in and the salary, and in the contrary case the consul himself pockets the difference. This practice is certainly an advantage and an economy for the merchants, but it is also at times a source of large

gain to the consuls. It has been several times proposed to put an end to this practice, either by abolishing the oath, which is not generally required in other countries (in fact, such oaths are forbidden in Germany by the German authorities, and are practically impossible in many other countries on account of the formality and expense), or by making the commissioner's fees official ones, to be returned to the Treasury, in which case the responsibility for the commissioner's salary should fall upon the Government. This last course was practically that proposed by the State Department in the draft of a bill submitted to Congress in 1884,* but in that case salaries should be increased, as it would be difficult, if not impossible, to find competent men to do the work on the derisory salaries now granted.

The question of the necessity of the oath, and indeed of the advantage even of consular certificates to invoices, is one which belongs not so much to the State Department as to the Treasury and the collection of the customs revenue. The fact that there are fewer undervaluations in British goods is ascribed by some to the peculiar British regard for the sanctity of an oath; by others to the innate truthfulness of the Anglo-Saxon character. Where goods are sold on consignment, especially goods manufactured expressly for America, and for which there is no market else-

* H. R. Ex. Doc., No. 121, 48th Congress, 1st Session.

where, invoices are often only a matter of form, and are frequently false. The consuls at Lyons, Zurich, and Horgen were therefore, in the autumn of 1884, authorized to employ experts to examine and report the cost of labor and materials used in producing the goods shipped from their districts. This system has proved very successful, and has already saved to the revenue millions of dollars. It would, however, be difficult, if not impossible, to apply this system everywhere.*

The various extra-official fees not only bring our consulates into disrepute abroad, as has already been remarked, but they have had at home a deleterious and debauching influence upon public opinion, in inducing the belief that our consulates are in general lucrative positions, in which a man may get rich without work. The number of applicants for these offices has therefore greatly increased. When it is known that consuls receive absolutely nothing more than their petty salaries, it is to be hoped that the pressure for office will be so diminished as to allow the reorganization of the consular service on a permanent basis.

The allowances to consuls are very moderate. They are given for office-rent an amount never more than

* For some interesting details on all these points, see the Report of the Secretary of the Treasury on the Collection of Duties, of December 7, 1885.

twenty per cent. of their salary; clerk-hire in certain cases in very sparing sums, generally fixed in the Appropriations Act for each consulate, and not, as it should be, at the discretion of the Department; and purely official expenses, in moderate amounts, for postage, stationery, blanks, and printing. "It is expected of consular officers that their offices should be suitably and respectably furnished. For this purpose they are allowed for furniture "a book-case, and other cases capable of containing the archives, a suitable desk and table, and the necessary chairs," if the sanction in each case of the Department has been previously obtained. But the keeping up of the *Government* office is entirely at the *personal* charge of the consul, for "carpets, matting, curtains, gas-fixtures, and like articles of furniture, as well as fire, light, and servants, will not be provided by the Government, and will not be allowed in the consular accounts."*

As matters now stand, with the small salaries paid, the consular system was, up to last year, entirely self-supporting; that is to say, the official fees received by the consuls far more than paid all the outlay. In the fiscal year 1883, for example, the total expense of the consular service was $870,290.60, and the total receipts were $926,054.95, leaving a surplus in the Treasury of $55,744.35. In 1884 the surplus was $36,587.24. In the fiscal year ending June 30, 1885,

* Consular Regulations, par. 517.

the total expenses were $870,183.10, and the receipts $791,345.43. This deficit of $78,837.67 is to be explained partly by a falling off of fees for invoices, some of which are still unaccounted for, but chiefly by the abolition (law of June 26, 1884) of the fees for services to American vessels, which in 1884 amounted to $91,031.86.

Now, there is no reason in the world why offices so important as consulates should be expected to pay for the expense of the system, like the Post-Office Department. It would in the end be more advantageous to the Government if even this amount were spent on the consuls, irrespective of fees received. Of course, if the revenue system should be materially changed, many consulates would become useless, and the returns for fees received (and they chiefly are for the verification of invoices) would be materially diminished.

The expenses of the British consular service for the financial year of 1883–84 were £254,124, or $1,235,334, or only about three hundred and sixty-five thousand dollars more than our own. But for this sum, owing to better salaries, more permanent tenure of office, the insistence on qualifications for office, promotion for good service, and the hope of a pension, Great Britain obtained a remarkably efficient service, including 42 consuls-general, 145 consuls, 458 vice-consuls, and 56 consular agents, besides deputies,

clerks, and chaplains. Few posts are without salary, chiefly such places as Berlin, Frankfort, Leipzig, Geneva, and Rome, where English consuls have very little to do, and where the offices are honorary ones, which have existed for many years. The salaries of consuls-general vary from $5,000 to $12,500, as at New York; and the salaries of consuls are sometimes as high as $7,500, as at Astrabad, and $6,000, as at Boston.

The French consular system has been an excellent one ever since it was reorganized in 1836; and it has improved since the reforms of M. Freycinet in 1880. France, in 1884, had in active service 28 consuls-general; 46 consuls of the first class, 48 consuls of the second class; 12 assistant consuls (*consuls suppléants*, a title substituted for the old *élève consul*, or consular pupil); 10 candidates for the rank of assistant consuls; 103 vice-consuls; 24 chancellors of the first class, 36 of the second class, 62 of the third class; 53 dragomans and interpreters, and 113 clerks, making in all 535 persons. The salaries of the consuls-general vary from $4,000, as at Antwerp, to $10,000, as at Cairo and Calcutta, and $12,000, as at New York and Shanghai. The highest salaries of consuls are $9,000 at Batavia, and $8,000 at San Francisco, while the lowest vary from $2,400 to $3,000. The highest vice-consular salaries are at Hang-kow $3,000, and Galveston $2,800; the lowest are $600 and $700. The assistant consuls are each paid $600; the interpreters

from $1,000 to $4,000; the chancellors from $1,000 to $2,400, and the clerks from $300 to $1,100, making the total expended for the one hundred and thirteen clerks $66,640. The total cost of consular salaries, including clerks, etc., in 1884, was about $943,000. The other expenses were about $340,000 more.

A consul is appointed, as we have seen, without preliminary examination, on the nomination of the President, and is confirmed by the Senate. It is impossible, therefore, to change him from one post to another, even though his special abilities or a sudden emergency might make this desirable, without a new appointment and a new confirmation. If the consular system should ever be made a permanent one, it would be very desirable that, even if Congress should fix the salaries to be paid at certain posts, consuls should be appointed only to the grade, leaving the posts to which they might be sent at the discretion of the Department.

The consul, after his appointment, is generally allowed thirty days, during which, by law, he may receive salary, for the purpose of receiving his instructions and making himself in some slight way familiar with his duties by personal instruction at the State Department. This, however, is, in practice, a mere formality. He is then allowed a certain number of days, fixed by regulation for different places, for arriving at his post. After arriving there he cannot, how-

ever, enter upon his duties until he has received what is called an *exequatur*, or recognition from the government in whose country he is to reside. This *exequatur* is sometimes a document given to him signed by the chief of the government; in others simply a publication in the official journal of the country that he has permission to perform his functions. In some countries, like Turkey, the consul is obliged to pay a very heavy fee for this document, there called a *berat*.

The object of the *exequatur* is very simple; for it is a rule of international law that a public officer of one state cannot perform his duties in the territory of another state unless he be acceptable to its government. This enables a foreign government to inquire into the antecedents of a consul, and to decide whether his presence be accompanied by no disadvantage. Refusals to grant the *exequatur* are not uncommon. An English consul was refused by Russia, in the Caucasus, because it was alleged that he was hostile to the Russian government, and had expressed strong opinions about Russian movements in Asia. In our own history, without going further back, a consul recently appointed to Beirut was rejected by Turkey, because he was a clergyman and might be too much connected with the missionaries; another was rejected by Austria on account of his political opinions, he having previously been an Austrian subject. *Exequaturs* of consuls are sometimes withdrawn,

though an opportunity is usually afforded to the government of the offending consul to withdraw them before this measure is adopted.

After the consul has received his permission to act, whether permanent in the shape of an *exequatur*, or temporary until his *exequatur* should be demanded, his first duty is to take possession of the archives and property of the consulate, until then kept by his predecessor or his representative, and sign jointly with him an inventory thereof. One copy of this is kept in the consular office and another is sent to the home Government. He then proceeds to notify the other American consuls in the country, and those immediately neighboring, of his entrance on duty, because occasionally there are questions and disputes causing correspondence. He also makes official calls, for the same purpose of notification, as well as from courtesy, on the chief authorities of the town as well as the province, if those be resident there, such as the governor, the prefect, the mayor, the commandant of the troops, the director of the police, the captain of the port, the postmaster, the head of the chamber of commerce, and indeed upon all more or less official persons with whom he may be brought into contact, or from whom he may find it necessary to ask favors. He also makes personal official calls on all the other foreign consuls resident in the place. This is not only a matter of courtesy, but of advantage; for he

may be at any time brought into relations with them through a dispute between an American citizen and the subject of some foreign country.

On the whole our consuls, in spite of the low salaries which sometimes compel them to live in a manner unbecoming their position, and disagreeable to themselves, have performed their duties remarkably well. Even the worst of consuls, finding themselves with an official responsibility put upon them, and with the duty of representing their country, have behaved with far more credit to us than could have been expected before their appointment. Unfortunately our Government has too frequently sent uneducated, unpolished, and utterly inexperienced men to take the positions of consuls in places of great responsibility, where experience, ability, and tact are prime requisites. Sometimes they are broken down in health, really unfit to work, and have been sent to a foreign climate in order to recuperate. Sometimes they have been unfortunate in business; and with the ignorance too widely prevalent of the cost of living abroad, they have been sent to gain a livelihood or to revive their fortunes. This class of appointments is especially unfortunate and discreditable to us, because such persons, anxious to make money, are sometimes too unscrupulous as to the methods they take. They not only contravene the laws and regulations, and involve themselves in debt, but do acts which no person, and

especially an official, should be guilty of. Indeed, there can be nothing worse, unless, possibly, men who have sometimes been sent to important places in order to reform them. Can it be expected that a man, who has been a drunkard at home, will, when he finds himself alone in a foreign country, ignorant of the language, unacquainted with society, and without resources within himself, should suddenly improve? On the contrary, he generally grows worse; and such men have at times brought our consular service into great disrepute.

While saying that our consuls have generally done well, we must admit that they do not do as well as they would if they were properly paid, and if the service were permanent. They have naturally to keep within their income, and generally their official income is all they have to rely upon. They try to increase it by all lawful means, and are therefore obliged to live in a mean way, which is not only unbecoming the representative of a great country, but which also prevents them from reciprocating the courtesies tendered to them by their colleagues and the citizens of the place; and thus hinders them from making those acquaintances which are absolutely necessary to the fulfilment of their duties or the proper understanding of their business. At the same time one must always take the accounts of travellers about our consuls with a few grains of allowance; for they are very apt to

give importance to seeming breaches of politeness and hospitality without taking into consideration the peculiar circumstances in which the consuls are situated. Still, much stress should be laid on the necessity imposed on consuls to enter into pleasant, and even intimate, relations with the authorities and chief merchants of their place of residence. In this way they cannot only more easily become informed on commercial matters, but can better perform one of their chief duties, the protection of American citizens. Many a vexation to travellers could have been removed, if the consul, in the first instance, without intervening officials, had been in a position to represent the case properly in a personal and friendly way to the authorities.

The need of a reform and reorganization of our consular system has long been evident. Our Secretaries of State have frequently expressed their opinions on this subject, and Mr. Frelinghuysen, in 1884, presented to Congress the draught of a bill, with recommendations about salaries. Although this was in answer to a wish of Congress expressed in the Appropriations Act of 1883, no attention was paid to it. President Cleveland has again recommended this subject to Congress in his message of December 8, 1885.

Such a reform should have in view the requirement of higher qualifications for office, more permanent

tenure, the promotion of efficient and experienced officers, higher salaries, the abolition of extra-official fees, and a better system of consular inspection. As consuls are in no sense political officers, there is no reason in the nature of things why the principles of Civil Service Reform should not be applied to the consular system. But in order to accomplish this, vacancies in the higher posts should be filled generally by promotion; appointments of new men should be made only to the lower grades; and the number of consular clerks should be greatly increased, so as to form a nucleus of young men acquainted with consular duties, from which promotions could be made. The experience of other countries shows us that two of the strongest incentives to good official work are a tenure of office permanent during good behavior, and the hope of promotion and reward. If these be assured him, a consul will do efficient service for years with a scanty salary, and in an uncomfortable and even unhealthy post.

There is one objection to long tenure, which it seems almost absurd to mention,—that a consul would become denationalized and un-Americanized by a long residence abroad. Englishmen always remain Englishmen wherever they may be; but as Americans have a more receptive and more assimilative nature, it is possible that, if living abroad as private persons, either for the necessities of their business

or for their own ease and comfort, Americans might, in length of time, come almost to identify themselves in feeling with the people among whom they dwell. But this could scarcely be the case with American officials, whose sole duty is to care for American interests and to protect American rights, who read American newspapers, who are in constant relations with America and Americans, and whose daily work is with interests counter to those of the people of the country where he lives. On the contrary, with every year of his stay in the service he becomes more patriotic and more truly American. What has been sometimes mistaken for a want of American feeling is the necessary conformity to the social usages of the country, the adoption of new modes of life, which with advancing years becomes a second nature; and the right feeling of every sensible man which induces him to look at the good rather than the bad points of a people among whom he has long lived. But all countries differ, and it is to be hoped that no reform of the service would compel a consul to live always at the same post or in the same country.

There seems to be current an exaggerated notion of what consuls can do for trade. In reality they can do little more than furnish information, or be in a condition to procure it, give advice, and see that the merchant in foreign lands stands in no worse position than those of other countries. English commerce

was not built up by the consuls. The shipping agent, who wished a return cargo, has been a much more important factor. The English consular service, however, keeps pace with commerce. Owing to the rapid development of manufactures on the European continent, and the consequent commercial rivalry with England, it was thought best to have someone abroad who could take in the whole subject, and the English consul at Düsseldorf was, a few years ago, sent to join the English Embassy at Berlin, as commercial attaché for Germany. Subsequently his functions were extended over the whole of Europe, and he was transferred, in the same capacity, to Paris.

The best results, as concerns the increase of foreign trade, have, probably, been obtained by the consular service of Belgium. Owing to the efforts of M. Lion d'Audrimont in 1879 and 1880, there was a reform and an increase of this service. Voyages of commercial exploration were undertaken in Spain, Italy, and Southeastern Europe. One consequence was the formation of a museum of samples of the products of each country, and of the styles and kinds of goods preferred and most readily purchased in foreign countries, in order to familiarize manufactures with what was desired. Belgian ministers were instructed to conclude conventions for the mutual execution of judgments of tribunals, for the collection of debts, for the recognition of stock companies, and for the extra-

dition of criminals. The result has been that Belgian enterprise has greatly prospered, and that Belgian goods and Belgian companies are rapidly taking the lead in Southeastern Europe. American manufacturers and merchants are generally careless about foreign trade, except when the home market is small, and, even when they have made successful beginnings in foreign trade, they are apt to neglect them if the home market revives. (We may trace here, perhaps, the influence of protection or particularism.) They are also apt to insist on their own modes of credit and of doing business, without regard to the usages of other countries; and, paying no regard to the prejudice of other people as to shapes, sizes, weight, width and style, they insist that whatever suits America, is intrinsically right and best, and should be accepted in other countries. Do what he may to make an opening for American manufactures abroad, a consul cannot overcome in this respect the inertia and obstinacy of American manufacturers. *

* It should be remarked, before leaving this subject, that almost the first book (one by a Russian was published almost simultaneously) on the consular system, was by an American. D. B. Warden, our consul general for France, published at Paris in 1813, entitled "On the Origin, Nature, Progress and Influence of Consular Establishments."

III.

DIPLOMATIC OFFICIALS.

Diplomacy, its Significance and Intention.—Rank of Representatives.—Rules of Vienna.—Ambassadors and Ministers.—Reasons for Sending Ambassadors.—Etiquette at Foreign Offices.—Detrimental Custom at Constantinople.—Ministers Plenipotentiary and Ministers Resident.—Objections to our Practice.—A Single Class of Ministers Preferable.—Suggested Change in the Rules of Vienna.—Commissioners.—Diplomatic Agents.—Secretaries and Attachés.—Qualifications for Diplomatists.—French the Language of Diplomacy.—Naturalized Citizens.—Negroes.—Clerical Diplomatists.—Appointments.—Letters of Credence.—Request for Acceptance.—Etiquette of Reception.—The Question of Diplomatic Uniform.—Social Duties.—Their Advantages.—Hospitality to Americans.—Lord Palmerston's Views.—Mr. Monroe.—Mr. Schroeder.—Effect of the Social Isolation of a Minister.—Duties at a Legation.—Despatches.—Complaints.—Naturalized Citizens.—Commercial Questions.—Requests for Presentation at Court.—Necessity of Resident Ministers.—Lord Palmerston's Opinion.—Union of Diplomatic and Consular Functions.—Relative Importance of Missions.—Salaries.—Allowances.—Outfits.

WHILE consuls, as we have seen, are charged primarily with the commercial interests of their country and with the protection of individual rights, the maintenance of friendly relations between states and

the settlement of disputes which may arise between them are entrusted to agents of another, of a higher class and with different functions, under the general name of diplomatic agents or, more briefly, diplomats.*

The word *diplomacy* itself occurs in its modern sense only toward the end of the eighteenth century. In French it is said to be first used by Count Vergennes, and in English, I believe, was employed for the first time by Burke, although not exactly in its present sense. The word has had a long history to reach its present meaning. The science of diplomatics, the study of ancient charters, documents, and diplomas, is a very different thing from the science of diplomacy. According to Calvo, who is now generally accepted as the best modern writer of international law,†

"Diplomacy is the science of the relations existing between different states, such as result from their reciprocal interests, the principles of international law and the stipulations of treaties or conventions. The knowledge of the rules and of the usages resulting from them is indispensable to conduct public affairs properly and to carry on political negotiations. Therefore, we may say, in more concise terms, that diplomacy is the science of relations, or simply the art of negotiations. . . . The essential nature of diplomacy is to assure the

* This convenient word, which is borrowed from the French *diplomate*, is now commonly used for every diplomatic official.

† Calvo (Carlos), like Wheaton, is an American, though from the Argentine Republic.

well-being of peoples, to maintain between them peace and good harmony, while guaranteeing the safety, the tranquillity, and the dignity of each of them. The part played by diplomatic agents consists principally in conducting negotiations relative to these important objects, in watching over the execution of the treaties which follow from them, in preventing anything which might injure the interests of their fellow-citizens in the countries where they reside, and in protecting those of them who may be obliged to ask for their assistance."*

Every nation, as the result of its independence, has the theoretical right of being represented by agents of whatever rank it may choose, and of receiving or not the agents of other countries. According to principles now universally accepted, every nation is in this way equal with every other; but formerly so many disputes arose from personal considerations, from the rank of the agents, and from the real or assumed importance of the countries which sent them, that the Congress at Vienna, in 1815, which regulated for the time being the affairs of Europe, felt it necessary to lay down certain rules, which have since then been followed by all civilized countries, and which the United States have formally accepted.† According

**Le Droit International*, third edition, i., 455, 457.

† It would take too long to tell here of the constant and ridiculous disputes for precedence at the Congresses of Nymegen, Ryswyk, and Utrecht. The footmen's quarrel at Utrecht forms the subject of an amusing article in the Spectator. Many interesting details on this and similar subjects may be found in Four Lectures on Subjects connected with Diplomacy, by the late Montague Bernard; in a very entertaining

to these rules diplomatic agents were divided into three classes: First, Ambassadors, Legates, or Nuncios, these latter two being sent by the Pope only; second, Envoys, Ministers Plenipotentiary, or other persons accredited to a sovereign or a sovereign state; third, Chargés d'Affaires, who are accredited only to the Minister of Foreign Affairs. The Congress at Aix-la-Chapelle, in 1818, completed this classification by allowing another class called Ministers Resident, who were to take rank between envoys and chargés d'affaires.*

though light book, Embassies and Foreign Courts, by "The Roving Englishman," the late E. C. Grenville Murray; and in International Vanities, by E. Marshall.

* The rules on this subject which have been prescribed by the Department, are the same as those contained in the seven rules of the Congress of Vienna found in the protocol of the session of March 9, 1815, and in the supplementary or eighth rule of the Congress of Aix-la-Chapelle of November 21, 1818. They are as follows:

ARTICLE I. Diplomatic agents are divided into three classes: That of ambassadors, legates, or nuncios; that of envoys, ministers, or other persons accredited to sovereigns; that of chargés d'affaires accredited to ministers for foreign affairs.

ART. II. Ambassadors, legates, or nuncios only have the representative character.

ART. III. Diplomatic agents on an extraordinary mission have not, on that account, any superiority of rank.

ART. IV. Diplomatic agents shall take precedence in their respective classes according to the date of the official notification of their arrival. The present regulation shall not cause any innovation with regard to the representative of the Pope.

ART. V. A uniform mode shall be determined in each state for the reception of diplomatic agents of each class.

ART. VI. Relations of consanguinity or of family alliance

According to the old system, ambassadors were supposed to represent not only the country but the person of the sovereign, and were, therefore, given various higher ceremonial honors than those accorded to other diplomatic agents. They had also the right to address themselves personally to the sovereign or chief magistrate of the country to which they were sent, for matters of business, instead of going through the usual routine of negotiating with the Minister of Foreign Affairs. In actual practice ambassadors nowadays have no rights of representation superior to ministers, and differ from them only in rank and precedence. The sovereign of a country is now generally so merged in the government of the country, that it is practically impossible for an ambassador to conduct any business except through the interven-

between courts, confer no precedence on their diplomatic agents. The same rule also applies to political alliances.

ART. VII. In acts or treaties between several powers which grant alternate precedence, the order which is to be observed in the signatures shall be decided by lot between the ministers.

ART. VIII. . . . It is agreed that ministers resident accredited to them shall form, with respect to their precedence, an intermediate class between ministers of the second class and chargés d'affaires.

These rules have been formally or tacitly accepted by all Governments except the Ottoman Porte, which divides diplomatic representatives into three classes only—ambassadors, ministers, and chargés d'affaires.—Register of the Department of State, 1884, p. 14.

tion of the Minister of Foreign Affairs. The personal interests of the sovereign are looked after by some private agent, or by some one specially sent on occasions of grand ceremony. The whole theory of the particular rights of ambassadors seems to turn in a vicious circle. Ambassadors are accorded higher privileges, because they are supposed to represent personally the sovereign, and they represent the sovereign personally only because they have higher privileges. It is, however, in great part owing to this theory that the United States have never sent ambassadors, although expressly allowed to do so by the terms of the Constitution. There has been a feeling that as there is no sovereign to represent, it would be improper to send ambassadors. This, however, has not been the case with other republics. In olden times Venice, as well as the States-General of Holland, sent ambassadors, although they had no sovereign to represent; and in our own days the French republic continues to send ambassadors, as has been the practice of that country under all its various forms of government. The French even send an ambassador to Switzerland, the only one accredited to that republic. Calvo, in speaking of this, says:

"The difference between agents of the second class—that is, ministers and envoys—and those of the first—that is, ambassadors—is rather hard to state. Several publicists have maintained that the latter have a formal right of treating directly

with the sovereigns, of which the others are deprived. But this is a distinction without meaning, especially since the organization of modern nations no longer rests exclusively upon the monarchical principle, and therefore renders it impossible for sovereigns personally to conduct international negotiations. The only rational distinction that can be established between the first two classes of diplomatic agents ought to have for a basis some essential difference in their attributes. Hence the subtleties imagined by certain authors, who attribute to agents of the first class a permanent and general representation of the person of their sovereign, while those of the second class have this character only in a transitory way and for a special object, clash with the reality of things. In our eyes the agents of the first two classes are exactly on the same line from the point of view of their character as of their duties and powers, and are distinguished from each other only hierarchically by the difference of the title by which they are designated.*"

Professor Martens says:

"Considered from the point of view of international law, all diplomatic agents, without regard to their class, are equal. This equality is shown by their all possessing, in like degree, all diplomatic rights. . . . Many writers have tried to infer from the rules of Vienna that ambassadors, as representing the person of their sovereign, have, in distinction from other diplomatic agents, the formal right of treating with the sovereign to whom they are sent, and of being received in audience by him at any time. We cannot admit this inference. As Prince Bismarck opportunely remarked, no ambassador has a right to *demand* a personal interview with the sovereign. The constitutional government of west-European monarchies compels ambassadors to treat with the Minister of Foreign

* *Droit International*, i., p. 474.

Affairs. Finally, it is untrue that ambassadors always represent the personality of the monarch; France, for example, appoints ambassadors, though its form of government is republican. . . According to the text of Art. II. of the Vienna rules envoys are deprived of the representative character. In point of fact they could not perform their duties, if they did not represent their state. They really differ from ambassadors only in the title and in their lower salaries." *

Baron de Neumann says:

"The four classes have the *diplomatic* character, for they all represent the sovereign, and mere chargés d'affaires often have to treat about interests as important, if not more so, than ambassadors themselves."†

Our system in this respect is a bad one, and contrary to our interests. We have no ambassadors, we have comparatively few envoys extraordinary and ministers plenipotentiary, but seem to prefer ministers resident, and even in the case of Paraguay and Uruguay retain the lowest rank, with its un-English name of chargé d'affaires. Our interests certainly demand that in every country we should be represented by

* *Völkerrecht. Das Internationale Recht der civilisirter nationen*, von Friedrich von Martens. Berlin, 1886. Vol. ii. pp. 32–34. As Martens, besides being Professor in the University of St. Petersburg, and member of the Institut du droit international, is a councillor of the Russian Foreign Office, his views may be taken to represent the opinions of the Russian government.

† *Éléments du droit desgens moderne Européen* par Le Baron Léopold de Neumann, p. 240. Paris, 1886.

agents of the highest title known or accepted there. The ministers of the United States should be able to take rank on equal terms with those of all other countries. This is not simply a question of rank and precedence, it has practical sides. At very many Foreign Offices the rule "first come, first served" is not observed; but an envoy or a minister, though he may have been waiting hours in the ante-chamber for an important affair, must give place to an ambassador who has come in at the moment; and at Constantinople it is even expected that, should a minister be in conversation with the Minister of Foreign Affairs or the Grand Vizier, he should withdraw and wait whenever an ambassador may be announced. In some countries a different rule is observed. In Russia it has been for many years the custom for the minister to receive the foreign representatives in the order in which they arrive at his office, without regard to their rank. This rule was brought into force at Berlin, owing to a personal dispute between Mr. Bancroft, our minister, and the British ambassador. Mr. Bancroft, after having waited a long time for an audience, was on one occasion obliged to yield to the British ambassador, who had that moment arrived. As the ambassador was personally disagreeable to the Chancellor, and Mr. Bancroft was a friend of his, a representation of the injustice done to the United States and its representative brought about a change of rule.

Nor are mere questions of rank and precedence to be entirely disregarded. The United States has every right to hold one of the first ranks among nations; but according to the present system, by which the ambassador longest in service becomes the *doyen* of the diplomatic body, and therefore its president and spokesman on extraordinary occasions, which may make necessary a consultation or even a protest of that body in order to protect the rights of all foreigners, the representative of the United States must always hold a subordinate position. If his opinions have weight, it is more through his personal influence, or the respect paid to his tact, discretion, and learning, than from the importance of the country he represents. In many, perhaps in most cases of a diplomatic reunion, this is of slight consequence. But there are other cases where the minister of the United States, if he had more official authority, could manage to have matters arranged which ultimately affect our interests. At Constantinople, for instance, where there is an effort to undermine the treaty rights of all foreigners, the ambassadors have of late taken up the habit of meeting one another in an unofficial way and in laying down rules, and in taking action on extra-territorial questions, which are then proposed to the rest of the diplomatic body; *i.e.*, in general the repretatives of the smaller states are asked for their approval or rejection, but are given no chance to suggest

or argue. Our government found it necessary, three or four years ago, to protest against this course, for it was beginning to be tacitly understood that only the ambassadors of what were called the Signatory Powers—that is, of those which had signed the Treaty of Berlin in 1878—should have any voice in matters which affected the interests of all foreigners in Turkey. Our protest had the theoretical result of bringing about occasional conferences of all foreign representatives; but the practice has remained much as before.

There is, I am aware, another objection, more theoretical than real, to the appointment of ambassadors, that as they are expected to represent the country socially in a far finer and grander style than ministers, very much larger salaries would be required. This objection, however, is more apparent than real; for while a certain amount of expense is necessary, it is just as necessary to a minister as to an ambassador who wishes to represent properly his country or carry on his business. Our ministers should in any case receive pay sufficient to enable them to live in the style becoming their rank, and not be obliged always to study how to make two ends meet, in countries where expenses are great and where a foreign representative is compelled to pay higher prices than those usually paid by the natives of the country. But of this later.

Between the two classes of Envoy Extraordinary

and Minister Plenipotentiary and of Minister Resident there is absolutely no difference of duties, functions, or privileges, scarcely even of ceremonial. The sole difference is one of rank and precedence. The social duties are exactly the same, and the increase in rank of the representatives in no way implies an increase of salary or expenditure. The question of mere rank is, however, not without importance. At the capitals of the smaller states of Europe, all the great powers, and nearly all the small ones, keep ministers plenipotentiary; the United States maintain merely ministers resident, who take rank after most of their colleagues, and at times after the representatives of petty principalities. Not only is the position of our minister a false one, but he is not as well regarded by the court to which he is sent, which resents the implication that it is regarded as of too slight consequence to be treated as it prefers, and as it claims to be treated, even where the politeness would not add a cent to our budget. To the countries of South and Central America, unless perhaps Brazil, ambassadors have never been sent; it is therefore easy for us, the preponderating power in this hemisphere, to be so represented as to have a predominating influence. Unfortunately we do not always do this, but we keep ministers resident and chargés d'affaires in capitals where other states have envoys. The case is much the same in Asia. We were the first to open com-

mercial relations with Corea, and after a treaty had been made by Admiral Shufeldt, we sent an envoy extraordinary and minister plenipotentiary. As the first representative and of the highest rank, he took the lead of his colleagues, who arrived subsequently, in arranging the terms of diplomatic and consular intercourse. His counsels were respected and his advice followed both by his colleagues and by the Corean government, inexperienced in dealing with foreigners. A year or two afterward, through some freak of the subcommittee on appropriations, his rank was reduced to minister resident. From the head of the diplomatic body he went to the foot, and the Corean government, supposing naturally that his official conduct had been disapproved, treated him accordingly. American influence in Corea was temporarily extinguished.

There is one simple solution for all such difficulties, to give the same title to all our chief representatives, —*i.e.*, if we still refuse to appoint ambassadors, to abolish ministers resident and chargés d'affaires, and have none but envoys extraordinary and ministers plenipotentiary. Questions of rank ought not to be complicated by questions of pay, which should be fixed according to the expenses incidental and necessary to the different posts, and it would be wise to appoint a man simply to the rank or office without specifying the particular place at which he is to re-

side.* This would be assimilating his appointment to that of an army or a naval officer, and would allow the Department to assign him to any post where he might at the time do the best service, without the necessity of a new confirmation. It would then require only a tenure of office during good behavior, and the possession of the necessary qualifications as a preliminary to appointment, to make our diplomatic system comply with all the requisites of the best civil service.

It would seem that the time had come when the rules of Vienna might properly and profitably be revised. Useful as they have been in some ways, they were imposed on the world by the great powers of Europe seventy years ago, when the state of things was very different from now.† The United States was then a small and insignificant power; there was no other independent state on this continent; no diplomatic relations had been begun with the countries of Asia. For such a revision it is, however, necessary to have the general consent of nations. We could not carry it through alone, but we might take the lead in proposing it. The change should be a very simple one: that there should be but one class

* A recommendation to this effect was contained in President Arthur's annual message of December, 1884.

† Even at the Congress of Vienna, Lord Castlereagh objected to the classification on general principles.

of diplomatic agents instead of four classes, or, in other words, that all chief diplomatic representatives, or heads of missions, should be equal among themselves, both officially and ceremonially, no matter by what title their governments should choose to call them. This would make an actual instead of a fictitious equality between sovereign states, would simplify ceremonial, and would at the same time allow each state to use for domestic purposes such a hierarchy as seemed good to it. Such a proposal, if properly and cautiously presented, would probably be sure of the support of all the world, except some of the great powers of Europe; but even they would not be slow to see its advantages.

Among subordinate diplomatic representatives are commissioners and diplomatic agents, strictly so styled. Commissioners or commissaries are frequently sent for the settlement of special questions, as, for instance, indemnities to be paid after a war for losses incurred, or boundary disputes. They are not generally given either the rank or the privilege of diplomatic agents, even though they be in the diplomatic service. Another class of commissioners, who are strictly political agents, are occasionally sent out without its being thought desirable to define exactly their rank, but they are usually received as ministers. Such are commissioners to conclude a treaty, such as we have ourselves sent to China and Mexico on different occa-

sions, and of this character is the English commissioner on the Hawaiian Islands, who ranks as a minister resident. In certain cases, with countries which are only semi-independent, such as Roumania and Serbia before the last war between Russia and Turkey, such as Bulgaria and Egypt now, it has been thought advisable to send persons empowered to perform diplomatic functions, but who, on account of the peculiar relations of the country to its suzerain, can be given no special title, and are therefore called simply "diplomatic agents." The consul-general is usually appointed to this post. The only diplomatic agent we have at present is in Egypt. One in Bulgaria is very necessary, for there are a number of resident Americans who need protection, and there is no one to afford it. There is not even a consul or consular agent of the United States anywhere in Bulgaria or Eastern Roumelia. These countries are still nominally in the jurisdiction of the minister and consul-general at Constantinople; but, as every one knows, the state of relations are such that these officials would have no way of communicating effectively with the Bulgarian government. Americans are therefore placed under the kindly care of the English diplomatic agent. In some cases it has been necessary to have recourse to Americans outside of Bulgaria, who happened to have influence there.

Even in the lesser diplomatic posts our Government

has been as careless of the proprieties as in greater ones. An example may be given of our hap-hazard way of proceeding. In 1880 it was decided to appoint a diplomatic representative at Bucarest, and the title chosen by Congress was "Diplomatic Agent and Consul-General." The person appointed to that post suggested to the State Department all the difficulties that might arise, as Roumania, being then independent both in fact and by treaty, would insist on having a diplomatic representative called by one of the titles agreed to by the rules of the Congress of Vienna. He was, therefore, accredited directly to the sovereign, with the expectation that he might come in under the general clause of "other persons accredited to sovereigns."* This, however, the Roumanians refused to permit, and for some months he was refused any official recognition. They agreed to recognize him as consul-general, and unofficially as diplomatic "representative" of the United States until a change could be made. It became necessary, therefore, to alter his title to that of Chargé d'Affaires; and it was only when he received his commission as such, accredited not to the Prince but to the Minister of Foreign Affairs, that he was considered to belong to the diplomatic body and allowed to treat officially with the government.

A legation or embassy comprises, in most cases, be-

* Rules of Vienna, Art. I.

sides the minister, one or more persons, known either as counsellors of embassy, secretaries of legation, or attachés. Of these only secretaries of legation are recognized by our system, and for many of our legations none are appointed. At Paris, London, Berlin, Tokio, and Pekin there is a first and a second secretary. Attachés were formerly allowed, though they were appointed by the minister and not by the Government. They received no pay, but were expected to assist in all the work of the legation. This has now been forbidden by act of Congress. In order properly to do the work of the legation, it is frequently necessary to appoint more persons, but they are considered only as clerks, without any diplomatic privilege or rank. In Spain, where there is a great deal of business, only one secretary is allowed, and it is necessary to employ a clerk. If we are ever to have any system in our management of foreign affairs it will be wise to have a number of young men, more even than would be absolutely necessary, who, by becoming acquainted with various countries, and with various languages, and by obtaining experience of diplomatic life, would be fit persons to be sent as agents, either regularly in the career or in any case of emergency. It would be well even for the Government to appoint several secretaries of legation at large, and in certain cases attachés, who should receive little or no salary until they became secretaries of legation. There are

always young men of independent means desirous of such positions, and perfectly able and willing to do the necessary work. Such appointments, however, should be regulated by the Department of State, and not by the minister alone, and the necessary qualifications should be rigorously demanded.

During the absence of a minister, the senior secretary of legation acts as chargé d'affaires *ad interim*, without special credentials; and by our laws he is entitled to an allowance equal to half the salary of the minister, which is paid separately and not deducted from the minister's salary. His salary as secretary of legation ceases for that time. In the English service, and in some others, the secretary of legation receives, in addition to his own salary, an allowance, paid out of the minister's salary, varying from five to thirty dollars per day. As a special exception the English secretary in Paris, when acting as chargé d'affaires, is accredited with the title of minister resident.

The qualifications for employment in the diplomatic service consist in most other countries of a knowledge of French, and, generally, of at least one other language; a good acquaintance with history, treaties, public and international law. One other qualification is absolutely necessary, at all events in civilized countries, that the person appointed should be a gentleman, that is, acquainted with the ways of the world and the usages and manners of the best so-

ciety in each capital in which he will be expected to move—that of the governing classes. I do not mean that what is called good birth, or belonging to a well-known family should be essential, although the son or grandson of a President of the United States, for example, would always have more credit and influence in the place to which he was sent than one of whom nothing was known. Considerations of this kind make it difficult to recommend the results of a simple examination as showing the qualifications necessary for a diplomatic agent. Temper, manners, position, tact, shrewdness must all enter into the composition of the agent best qualified to do his country service. I remember a Russian diplomat saying to me that after they had all passed the diplomatic examination, each candidate was in turn received by Prince Gortchakof, who, all other things being equal, judged a great deal of his fitness for the post by the manner in which he entered the room and addressed him.

I have mentioned a knowledge of French as being absolutely necessary. This is certainly true in all European countries. It might be sufficient for a diplomat to have a good knowledge of the language of the country to which he is sent, especially in South America, but as other foreigners and colleagues will often know nothing but French, and as it is necessary to keep on friendly relations with them, this is also essential. French is the generally received language

of diplomacy in Europe. In China and Japan English is more usually the language. In South America Spanish is used in all countries except Brazil. It is the habit of both England and the United States, however, to use English as the official language, and for their ministers to write in that tongue all notes and despatches sent to the government to which they are accredited. In most cases it is found convenient to accompany the official English notes with an unofficial French translation, in order to save time and to obtain speedy answers, as not all Foreign Offices have an English translator at hand. French is also the general language of treaties, but it has become common for a treaty to be drawn up in the two languages of the two countries which make it, either text being considered as official. For this, of course, very careful translations and accurate knowledge of the language are necessary. Just after the Franco-German war an attempt was made to introduce German as a diplomatic language, and the German ambassador at St. Petersburg stated his intention to Prince Gortchakof to write to him in the future in that language. "Certainly," said the Prince, "we all understand German. Of course you must expect our replies to be in Russian." Nothing more was heard of the proposition.

Among other things a minister should be a man who has already lived in foreign countries, and is to some degree acquainted with their usages and cus-

toms, even if he has not already been in the service and acquired a knowledge of the rules of diplomacy. It would be better that he should be a native of America than a naturalized citizen, and in any case he should not be sent back to the country of his birth. Persons of foreign birth have been at times in the diplomatic service of all countries, owing to certain special qualifications or to peculiar circumstances. St. Saphorin, who was the Hanoverian and English envoy to Vienna at the beginning of the last century, was of Swiss origin; so is also Baron Jomini, the son of the celebrated writer on war, who, although not holding a diplomatic position, has been for a long time one of the high officials of the Russian Foreign Office. Owing to the inter-connections of the German States it has not been uncommon for a native of one to be an official in the service of another; and in this way, after the war of 1866, Count Beust, who had been Minister of Foreign Affairs in Saxony, was taken to Vienna in the same capacity. Still, it is better to avoid this. A native citizen always knows the interests of his own country better than a foreign-born citizen can, unless the latter has come there in his early youth. There are, of course, exceptions; but no man should ever be appointed minister abroad who has left his own country for political reasons. We are too apt to think that all countries should pattern themselves after our model, and are either unable or

unwilling to take note of their prejudices. But what should we have thought if, after the close of the War of the Rebellion, Mr. Benjamin had been sent to Washington as the English minister? It is doubtful whether our Government would have received him; and even had he been received, he would scarcely have been treated with politeness. We should never forget, much as we may sympathize with a political exile, that he may be treated in the same way should he be sent back as minister to the country of his birth. It is not so much a question as to what is considered proper by us, as to what is agreeable to the country where the minister is sent; for he is not sent to represent us in the sense of being in any way a typical American, but in order to transact successfully such business as we may have to do. For that reason there are serious objections to the appointment of negroes. To Liberia it does not matter much; although there is not the slightest need of a mission to that petty state. But the government of Hayti, although composed generally of mulattoes or negroes, prefers a white representative from other countries. Hayti wishes to be considered of importance in the world, and thinks that we are treating her with contempt in sending a minister of her own race. Other foreign powers who have relations with Hayti send white persons, why, therefore, should not the United States do so, they argue.

There is but one profession that is generally agreed as disqualifying men from holding these offices; that is the clerical profession. In old times the governments of various countries were much in the hands of the clergy. Very many ministers of state as well as ambassadors were prelates, or at least clergymen. Nowadays this is not so, except in the case of the nuncios of the Pope, who is a spiritual sovereign. Clerical diplomatists have probably not been sent from any country except the United States since the French Revolution. The last English clergyman appointed to diplomatic office was Mr. Robinson, who after holding several preferments became Bishop of London. His career, however, was a peculiar one. He had been domestic chaplain to the British minister at Stockholm at a time when domestic chaplains were considered of such low rank that they generally married the lady's maids. At one time, in the absence of the minister and of any secretary of legation, he was the only man who could be left as the chargé d'affaires. He displayed much ability and tact, and succeeded in ingratiating himself with King Charles XII. to such a degree that he was finally appointed minister; and as such accompanied the king on several campaigns. His last appearance in diplomatic life was as one of plenipotentiaries who signed the treaty of Utrecht.

With the exception of a few Catholic countries and England, even the higher clergy do not generally ap-

pear in society; and a clerical diplomatist would be an anomaly. It might be that under special circumstances a clerical diplomatist would be of use in affecting public opinion; and such was the case at the outbreak of our war, when Bishop McIlvaine, of Ohio, was sent to England in order to conciliate the church sentiment of that country; and Archbishop Hughes, of New York, was despatched on a like errand to the Catholics of England and France. Neither of them, however, had any credentials or diplomatic powers. Similar cases might occur when it would be proper to send a high Catholic clerical dignitary on a special mission to some Catholic country where the church still maintains much power. But it cannot be expected that to send a Protestant clergyman, as minister to a Catholic country, where he is regarded as a heretic, would have a good effect. Apart from the disabilities which attend him simply because he is a clergyman, he has, moreover, the great temptations of his status—to preach, to hold prayer-meetings, and to appear in his capacity of clergyman in a way disliked by the authorities to whom he is accredited. So also at times women have been given secret political missions, but they have not yet been publicly or usually employed.

A diplomatic official is in no way a political one in the ordinary sense. The politics of every country are governed almost entirely by internal considerations.

That is especially the case with us. We ought to consider foreign ministers in the light of lawyers entrusted with a brief to uphold all the interests of the country apart from those of any political party, and ready to receive instructions from their clients, of whatever political opinion or religion they may be. In employing a lawyer, no one, other things being equal, would think of inquiring where he went to church, or for whom he had voted; one would only ask what his capacity was for the case with which he was to be intrusted, and how he was likely to impress the court before which he was to argue. So it should be with governments. Even in countries where the foreign policy makes a dividing line between parties, it has been found advantageous to keep in office trained and experienced diplomatic officials, without regard to their personal political preferences. They are found in practice to serve as well, and generally much better. An English minister will carry out the instructions of his government with equal vigor whether he belongs to the party in office or not. There may be exceptions in the case of countries which waver between two or three different forms of government. It was very natural that France, after obtaining a republican government, should not wish to be represented abroad by men who were prominent Imperialists, because the republic was desirous of conciliating the good opinion of European sovereigns, and

wished its representatives to be thoroughly in accord with it. But in our own case, where the Government is well established, and where the questions with which a minister has to deal are diplomatic and not dynastic or governmental ones, it should make no difference whether a minister abroad is a Democrat or a Republican. If he be fit to represent us under the rule of one party, he is fit to do so under the rule of another. There is no reason in the nature of things why, when a new party or a new administration comes into power, the ministers appointed by the preceding one should be recalled. They represent the Government and the interests of the United States, not the President, nor the interests of any political party.

Even in ordinary business a man selects as his agent, especially in delicate matters, a man of tact, knowledge, and discretion, who will be well received by those with whom he has to deal. How much more should this be the case in public affairs! The only proper way of regarding our diplomatic posts is that so tersely expressed by President Cleveland: "Public office is a public trust."

In speaking of the true purposes of diplomacy, F. von Martens well says:

"As organs of international administration in the sphere of the political interests of States, diplomatists can only reach the high aim set before them when they learn to recognize and understand thoroughly the cultural and political aspirations

of the people whom they serve and of the people where they exercise their functions. Insight into these aspirations and a just appreciation of them can alone secure the peaceful development of the external relations of States, and can alone guarantee the success and enduring results of diplomatic work." *

Our diplomatic are appointed in the same way as our consular officials; that is, by the President, with the consent of the Senate. After he has accepted the appointment, and has taken the oath of allegiance, a minister is given by law not more than thirty days, with salary, for the purpose of receiving his instructions. These instructions are, for the most part, contained in a pamphlet printed by the State Department, containing only the general rules which regulate the conduct of a minister, and especially his relations to the State Department and the Treasury. This pamphlet is considered secret, though it has nothing in it that could not be public to all the world; and indeed so secret have these personal instructions been thought at various times by the State Department, that when a new edition is published the old copies are destroyed, and not even the Department has a complete series of them from the beginning. In case important and intricate business should await a minister at his post he would be expected to familiarize himself with the history and affairs of the legation before leaving this

* Völkerrecht, ii., p. 65.

country, and might possibly receive definite instructions in writing. In the early times of the Government such written instructions for specific cases were the rule; but they are now rarely given. The minister is furnished with credentials—that is, a letter from the President to the sovereign or head of the government to which he is going, to the effect that the President, reposing perfect confidence in the zeal, ability, and discretion of A—— B——, has appointed him as minister of the United States at such a place; and that he hopes all faith and credit will be given him when he speaks for the United States; and especially when he reiterates the assurance of respect, sympathy, etc. These letters are always addressed, when coming from a republic, to "Great and Good Friend," and are signed "Your good friend," followed by the President's name and countersigned by the Secretary of State.

No extra compensation is allowed to a minister for his journey, but he is allowed to receive his salary during his transit to his post for a certain number of days, fixed by the State Department, varying from seventy days for Pekin to fifteen days for Hayti.

The general rule in other countries is, that before the actual appointment of a minister, the government to which it is proposed to send him should be privately asked whether it is willing to accept him. There are often personal or political reasons why a

minister is not acceptable in a particular country, while he might be perfectly acceptable in many others. This gives the foreign government the opportunity of refusing him without publicity, and therefore does not work harm to the minister himself. Such refusals are not uncommon. Recently, for example, the German government, it is stated on good authority, refused three English ambassadors who were proposed before the present one was accepted. Had they been publicly rejected it might, and probably would, have interfered with their usefulness elsewhere. Among other well-known examples, the King of Sardinia, in 1820, refused to receive Baron de Martens as Prussian Minister, alleging that his wife was the daughter of a French regicide; and, in 1847, the King of Hanover refused to receive as Prussian Minister, Count von Westphalen, because he was a Catholic. Even with our own ministers, one was refused at Vienna because he had publicly sympathized with the Hungarians before they had made a successful revolution. Another was refused by Italy because, in arguing for the maintenance of the temporal power of the Pope, he had said disagreeable things against the Italian government. If the acceptance of these ministers had been privately asked beforehand, the refusal would have been much easier and less disagreeable to the gentlemen in question. There is probably an historical reason why our Government did not at

first ask for the acceptance of its representatives. The first ministers whom we sent abroad were sent while we were still considered as rebels, and had not actually gained our independence. After that, before the days of steam and electricity, the communications between America and Europe, owing to wars, were so slow and uncertain that it might have required six months to obtain an answer. Foreign governments, in treating with us, have naturally followed our system. If we do not ask for the acceptance of a minister, neither do they. But in earlier times they always conformed to their own usage, so far as to inform our ministers abroad of the intention of appointing certain persons as ministers here, and expressing the hope that they would be agreeable to us. Our government has more than once done the same thing. It is stated that a formal application was made to the French government in 1869 to receive Mr. Washburne as our Minister at Paris; but there seem to be no proofs of this on file in the State Department. It is, however, certain that in 1871 or 1872, the French government officially asked for the acceptance, as Minister in Washington, of Mr. Jules Ferry, who was agreed to by Mr. Fish. His nomination being changed, the name of the Marquis de Noailles was officially proposed and accepted in the same way. Now that rapid communication has been established between America and Europe, the reasons once valid have ceased, and there is no

excuse for our not conforming to the general usage in this respect, at least so far as to communicate the nomination confidentially, a sufficient time before its promulgation to allow of objection.*

It may be mentioned here that our government has never been slow to use its right of asking for the recall of, or of sending away a foreign minister who becomes in any way obnoxious. The recall of Mr. Genet, the French Minister, was asked in 1793; that of Mr. Jackson, the British Minister, in 1809; that of Mr. Poussin, the French Minister, in 1849; Mr. Crampton, the British Minister, was given his passports in 1856; and intercourse ceased with Mr. Catacazy, the Russian Minister in 1871. There are, perhaps, other cases, where a mere hint was sufficient to effect the minister's recall, without publicity.

On arriving at his post the minister's first duty is to inform the Minister for Foreign Affairs of his arrival, and of his character, and to request an interview for the purpose of asking an audience for the purpose of presenting his credentials to the head of the state. He is usually received at once by the minister, and by the sovereign as soon as an interview can be arranged, though in case of absence or illness there may be a delay of weeks, if not of months. Etiquette, however, demands that the audience for presenting

* On this subject see *Cours de Droit Diplomatique*, by P. Pradier-Fodéré, I., pp. 347-354.

credentials should take place as early as possible. These audiences are either public or private. In the first the minister is accompanied by the Minister of Foreign Affairs, generally followed by his own secretaries, and goes to the palace in more or less state, according to the customs of the place; for these vary greatly in different capitals. For an ambassador a state carriage is always sent. This is not always the case with the minister in a capital where ambassadors also reside, it being considered desirable to draw distinctions of ceremony between the two. In small countries, where there are no ambassadors, a state carriage is usually sent for the minister, in some cases accompanied by an escort. At a formal audience all parties are standing: the minister enters, is introduced to the sovereign by the Minister of Foreign Affairs, addresses a few words to him stating his character, and presents his letters of credence. These the sovereign takes, sometimes goes through the formality of reading them, and replies briefly to the minister. After the formal part of the audience is over, there is generally a friendly conversation of a few moments, and the ceremony ends in much the same way as it began. In some countries it is expected that a formal speech will be made by the minister to the sovereign, and a formal reply made. In such cases the speech is written out in advance and given to the Minister of Foreign Affairs, who returns

a copy of the reply before the audience takes place. This is in order to prevent embarrassment, as well as to see that nothing unpleasant be said. In some countries, as in Russia, a minister is nearly always received in private audience. He goes to the palace alone, is met by the Grand Master of Ceremonies, conducted to the Emperor, introduced into his room, and is left alone with him. After a word or two the Emperor requests the minister to be seated; and the conversation is informal.

Mr. John Quincy Adams remarked in 1809, after one of these ceremonies: "The formalities of these court presentations are so trifling and insignificant in themselves, and so important in the eyes of princes and courtiers, that they are much more embarrassing to an American, than business of real importance. It is not safe or prudent to despise them, nor practicable for a person of rational understanding to value them."

After the presentation of his letters of credence it is then the duty of a minister, if accredited to a sovereign, to ask for presentation to the Queen or Empress and to the Princes and Princesses. Such presentations, where the royal family is numerous, may be scattered over a long series of months. Immediately after presenting his credentials the minister makes ceremonial calls on the various ministers of the country to which he is accredited, and to other

high officials, of whom a list is generally given him by the Master of Ceremonies. He also makes formal visits to all of his colleagues, when he is expected not simply to leave a card, but to go in if they are at home. It is generally the rule that a minister or an envoy should not call for the first time upon any ambassador unless he has first written a note asking when he can be received. We mention this formal part of the minister's business because slight breaches of etiquette at the beginning are often ascribed to ignorance and create an unfavorable impression. Etiquette differs very greatly in the different capitals of Europe in small particulars; and it would be unsafe for a diplomat of even great experience to appear at a new court without informing himself exactly of the usages of the place. In case the secretary of legation be not thoroughly acquainted with such usages, they can always be learned from experienced colleagues, generally from the one who has been there the longest, and therefore the dean of the diplomatic body, who is always ready to welcome a new-comer.

The diplomatic officials of nearly all countries wear a uniform, generally consisting of a coat more or less richly embroidered with gold, a cocked hat, and sword. By a resolution of Congress passed in 1867 the diplomatic officials of the United States are forbidden to wear "any uniform or official costume not previously authorized by Congress;" and although

the wording of the resolution is ambiguous, and might be held to prevent a minister's wearing any clothes at all, he appears in ordinary evening dress, unless, having been a military or naval officer, he wear the uniform prescribed for his rank. The history of this resolution is somewhat curious. At the beginning of our Government the costume worn by men in society admitted of much greater variety than at present in color, cut, and ornament; and therefore there was no special distinction, except in point of richness, between dress worn at court and on ordinary occasions. When our mission went to Ghent in 1814, for the conclusion of the treaty with Great Britain, a change had come over European usages; and it was found to be advisable to adopt some uniform to mark the rank of the members of the mission. They agreed to wear a blue coat, slightly embroidered with gold, with white breeches, white silk stockings, and gold knee-buckles and shoe-buckles, a sword, and a small cocked hat with a black cockade. For grand occasions this uniform was made somewhat richer. In 1823 Mr. John Quincy Adams, then Secretary of State, wrote to our ministers abroad recommending the use of the uniform worn by the mission of Ghent, sending a formal description of it as well as an engraved plate. During the administration of General Jackson, in 1829, this uniform was changed. It was made simpler and cheaper, consisting of a black

coat with a gold star on each side of the collar, black or white knee-breeches, a three cornered chapeau-bras with a black cockade and a gold eagle, and a steel-mounted sword with a white scabbard. This dress was not prescribed by the President, but was suggested as an appropriate and convenient uniform dress for the diplomatic agents of the United States. It is said that not all ministers conformed to this recommendation, and that some of them appeared in more brilliant uniforms suited to their respective tastes. Some suggestions were made on this subject to the Department of State; and Mr. Marcy, on June 1, 1853, issued a circular withdrawing all previous instructions, and recommending the appearance at court of our ministers in the simple dress of an American citizen, "whenever it could be done without detriment to the public interest." Mr. Marcy cited the example of Dr. Franklin, who had appeared at the French court in very simple dress; but it is now well known that this was not owing to any love of simplicity on the part of Franklin, but merely that on a certain occasion his presence was so much desired at court, when he had no clothes in which he considered it fit to appear, that he was requested to come in whatever he happened to be wearing at the moment. In compliance with these instructions, several of our ministers attempted to go to court in plain evening dress. To Mr. Belmont, at The Hague, no objection

was made, although it was evidently preferred that he should comply with the usages of the place. Mr. Mason presented his credentials to the Emperor Napoleon in civil dress, but subsequently adopted a simple uniform, which he always wore on ceremonial occasions. At Stockholm, while the King expressed his perfect willingness personally to receive Mr. Schroeder in plain dress, he said, "The etiquette of my house is subject to regulations which cannot be waived for one in preference to others. In audience for business I will receive him in any dress his Government may prescribe; but in the society of my family and on occasions of court no one can be received but in court dress, in conformity with the established customs." Mr. Vroom, at Berlin, was told that "his Majesty would not consider an appearance before him without costume as respectful." Mr. Buchanan was excluded from the diplomatic tribune at the opening of Parliament, because he refused to wear court dress; and when subsequently he insisted on wearing civilian dress, Sir Edward Cust told him "that he hoped he would not appear at court in the dress he wore upon the street, but would wear something indicating his official position." He therefore appeared at court in ordinary evening dress, with a plain black sword and a cocked hat. Mr. H. S. Sanford, who had been acting as chargé d'affaires at Paris, until the arrival of Mr. Mason, carried out Mr. Marcy's instructions lit-

erally, and adopted an evening dress. When Mr. Mason, as has just been mentioned, returned to the use of uniform, Mr. Sanford complained of this to the Department of State, and offered his resignation. His conduct in the matter was approved by Mr. Marcy, but his resignation was accepted. Six years afterward, in January, 1860, when Mr. Faulkner was about proceeding to Paris, Mr. Sanford wrote to General Cass referring to the previous correspondence, ridiculing Mr. Mason's course, and asking that Mr. Faulkner should be instructed to wear civilian dress. Mr. Sanford in this letter confounded two things, court dress and diplomatic uniform; for even in countries where court dress is required, there is a diplomatic uniform different from that worn by other officials; and the example of the Turkish ambassador, brought up by him, was by no means to the point. Turkish diplomats always wear a diplomatic uniform, and by no means the ordinary Turkish dress, which can be worn in the presence of the Sultan. In compliance with a resolution of the Senate, the papers on this subject were printed shortly afterward.* No further action was taken until March, 1867, when by the joint efforts of Senator Sumner and General Banks, the resolution in question was forced through Congress. The debate was remarkable chiefly for

* Senate Ex. Doc., No. 31, 36th Congress, 1st Session, April 2, 1860.

those crude expressions of Chauvinism in which demagogues delight to indulge, except for the very sensible and practical remarks of General Schenck, who, in conjunction with Mr. Pruyn, attempted to amend the resolution so as to give the State Department power to fix the exact dress to be worn. The resolution, in point of fact, does not accomplish what was intended by it—to prevent the wearing of court dress in London, almost the only place where it is worn; for court dress is neither a "uniform" nor an "official costume."

The objection to plain evening dress is not its simplicity, but because being the only persons, as a general rule, at any court ceremony in evening dress, except the waiters and servants, our representatives are unpleasantly conspicuous. They are much more comfortable in a hot and crowded room than if they wore a heavy, closely buttoned uniform; but they are the subject of remark, not so much on the part of their colleagues, who profess to envy them their ease, but from other persons unaccustomed with our usages; so that when at court they generally feel in an awkward and false position, much as a private gentleman would, who by some accident found himself at a dinner or evening party in a morning dress. It is said that the gentleman who is chiefly responsible for this rule experienced himself the discomfort of it; and that, although he wore civilian dress on his first

appearance as minister at Brussels, he subsequently obtained a commission as major-general of militia in Minnesota, which allowed him to appear in uniform. All that is desirable is some plain and inconspicuous mark of the official character. The blue dress-coat with brass buttons, formerly in vogue, and so well known to us from Daniel Webster, would be amply sufficient.

The next duty of a minister, after he has complied with the formalities of his reception, is, of course, to acquaint himself with the affairs of his legation; to learn their actual situation, and to be ready to proceed to business. He should then begin to inform himself about the country in which he is to live; its history, laws, usages, manners, and customs; to make acquaintances not only among officials, but even among private persons; and to endeavor, as far as is in his power, to become a component part of the society of the place. As to political personages, he should, so far as the feeling and prejudices of persons in power allow, become acquainted also with statesmen who are out of office, and with members of the opposition. He should not, however, fall into the other extreme, and cultivate solely the opposition. There are capitals, and Paris and Bucarest might be mentioned as two extremes, where the members of the government are not generally people in the highest society; and it is a great mistake, although ministers sometimes fall

into it, to cultivate the best society of the place, useful as that may be, to the exclusion of the political leaders; and to espouse the prejudices and quarrels of the opposition against the government.

One of the great duties of a minister is hospitality; and this is not a question of display; but for a minister to be useful he must make acquaintance with the leading persons of the country, receive them at his house, be on good terms with them, and prepare himself for the time when he has some important end to gain. Much more is done by private conversations, amiable talks over a dinner-table, or after, than can be done by official despatches. Where very great principles are at stake, it is necessary to write formal notes and to put the whole negotiations into permanent form; but for all the ordinary incidents arising between two countries, a few frank words between people who know, appreciate, and understand each other, are worth far more than formal documents. A good diplomatist will always seek to avoid issues, by arranging a satisfactory settlement without a formal discussion. For such informal proceedings mutual confidence, and secrecy are absolutely necessary. A written despatch must be replied to, and, if expressed in anything but the most suave language, is apt to call out a reply. Each side feels it a duty to maintain his own case. Take an example: A ship-captain arriving at a port of Spain, having endeavored to

conform to all the regulations, and supposing that he was correct in his action, was fined, for some supposed infraction of the customs rules, a sum sufficient to confiscate his vessel and to ruin him. The whole proceeding was illegal on the part of the Spanish authorities, and it required only a few words from the Chargé d'Affaires, in a conversation with the Minister of Finance, to arrange the matter without publicity and without a word in writing. If the official formalities had been observed, and a note had been written to the Minister for Foreign Affairs, which would then have been referred to the Minister of Finance, and then to the officials of the customs department, the affair would have lasted for months, and very possibly the Spanish officials would have discovered some technical means for justifying their conduct. Take a contrary case: One of our recent ministers was unsuccessful and unhappy in his mission at Berlin. It may be that in no case would the German government have entirely met the wishes of the United States. But the minister, ignorant of diplomatic usage, had not felt the necessity of forming an intimate acquaintance with German statesmen, and when he received an instruction from our Government, considered that he had done all that was necessary when he had put that in the form of a note to the Minister of Foreign Affairs, and had sent it by his messenger. In the case of the Lasker resolution, a few words

would have removed all difficulties, have prevented two governments from coming almost to the verge of hostilities, and have kept our relations with Germany in that friendly state where they had always before been. There is an interesting instance of this kind much earlier in our history. The relations of the minister, General Armstrong, to the French Government, were in 1810 very cool, and hints were given to some of our other ministers abroad, with the hope that they would be repeated and he would be recalled, as indeed he eventually was. "C'est d'abord un très-galant homme," said the ambassador: "but he never shows himself, and upon every little occasion, when by a verbal explanation with the minister he might obtain anything, he presents peevish notes." "They did not impeach his integrity, but he was morose, and captious and petulant."*

A minister should also be hospitable to his own countrymen. It is often said that no American minister is bound by his instructions or by the laws to be hospitable to travelling or resident Americans; but usage and even policy require this. It is much better for the minister personally that he should conciliate the good-will of travelling Americans, no matter what rank in society they may hold; and it is also better among the people to whom he is sent, that he is known to treat his own countrymen well, and not to

* Memoirs of John Quincy Adams, ii., p. 151.

be ashamed of them. If, therefore, a minister have sufficient private means, for his salary would never be enough to keep an open house, he will find it to the advantage not only of the Government but of himself in every way. Where attempts are made to do this, they should not be by halves. I have known a legation in a European capital where the minister's wife received the calls of Americans on one day, and those of diplomats and the society of the place on another day; and while many dinners were given, care was taken not to mix the society. The result was that no one cared for the hospitality. The Americans felt vexed at their being not thought good enough to meet the society of the place; and the diplomats and young men of society often regretted that they were deprived of meeting pretty and charming American girls. The minister defended this course on the ground that the society of the capital was exclusive, and did not care to meet Americans. Whatever they might be in their own houses, they certainly did expect to see Americans at the American legation; and never, in an experience of many countries, have I witnessed this separation of the sheep and goats in any but an American legation.

If great stress seems to be laid upon the social duties of a minister, it is because the experience of all countries has shown the very great value of social intercourse for the political ends which a minister has

in view. Lord Palmerston expressed this very well when he was examined by a committee of the House of Commons with regard to diplomatic salaries. He said:

"Now in order to preserve good relations with a country, it is not sufficient simply to have a person living in town as cheaply as he can afford to exist, because the social position of your representative is a very important element in his power to be useful. In regard to his intercourse with the ministers of the country, great facilities and great means of good understanding are afforded by easy social intercourse, which can only possibly be obtained by his being able to receive them, as well as also being received by them. Again, it is of great importance that your ambassador should be in habits of social intercourse with the public men not in office; that he should have the means of receiving them, becoming acquainted with their views, and explaining to them the views and policy of his own country. Therefore I think that it is of great importance to this country that your representative should be in such an easy position with regard to money affairs as may enable him to receive hospitably persons of all kinds, and I may say also of different nations."*

Mr. Monroe, when Secretary of State, had used much the same language thirty years before.

"Is it necessary that the United States should be represented with foreign Powers? That has long ceased to be a question. Shall they maintain a proper station there, not assuming, but dignified, such as the general expectation and common opinion of mankind have given them? That has never been a question. The character of the country, if not its rank, is in some degree

* Senate Ex. Doc., No. 93, 32d Congress, 1st Session, p. 8.

affected by that which is maintained by its ministers abroad. Their utility in all the great objects of their mission is essentially dependent on it. A minister can be useful only by filling his place with credit in the diplomatic corps, and in the corresponding circle of society in the country in which he resides, which is the best in every country. By taking the proper ground, if he possesses the necessary qualifications and is furnished with adequate means, he will become acquainted with all that passes, and from the highest and most authentic sources. Inspiring confidence by reposing it in those who deserve it, and by an honorable deportment in other respects, he will have much influence, especially in what relate to his own country. Deprive him of the necessary means to sustain this ground, separate him from the circle to which he belongs, and he is reduced to a cipher. He may collect intelligence from adventurers and spies, but it will be of comparatively little value; and in other respects he had as well not be there." *

An investigation of the salaries needful to diplomatic officers was made by our own Government in 1851. Among the replies from our ministers abroad was one from Mr. Schroeder, then chargé d'affaires at Stockholm, who said:

"In the late examinations ordered by the British House of Commons concerning diplomatic salaries, it was stoutly, although somewhat ludicrously, urged by several of the witnesses who had served as ministers on the continent of Europe, that the giving of dinners was really an important branch of their duties. The diplomatic corps at this place would certainly have given similar testimony; and viewing the matter seriously,

* James Monroe to William Lowndes, Chairman of Committee of Ways and Means, April 5, 1816, Annals of Congress, 14th Congress, 1st Session, p. 1735.

my own observation and experience are, that no address or management could perhaps so readily obtain information, procure a rare copy of statistical record, or perhaps achieve other and more diplomatic ends, as that part of the diplomatic duty to the importance of which the English witnesses testified. Consideration and a certain kind of influence are measured by appearances; and although, generally speaking, it is a sort of importance little desirable for an American, a certain degree of it must in this manner be purchased, in order to have occasional access to what in many cases may be indispensable—the ear of the king. In corroboration of this I take the liberty to say that I believe a conversation which I had an opportunity to hold with his Majesty upon the subject of Swedish taxes and American commerce, has had, and will have, more effect in the amelioration of the Swedish tariff than all the arguments which I had employed during the preceding six months at the Foreign Office, and with other members of the government and of the diet."*

Of course there are ways and ways of entertaining, and one minister of social experience and tact can accomplish far more by a small expenditure than another could obtain by lavishness. Balls and receptions are useful, because they ingratiate the minister with the local society; and they are as much expected from a foreign minister in Washington as from a foreign minister abroad. Large formal dinners are sometimes a necessity; but at a dinner of this kind, where every one's place is marked out for him by etiquette and official rank, little can be accomplished. Such

* Senate Ex. Doc., No. 93, 32d Congress, 1st Session, pp. 25, 26.

dinners only lead to intimacy. But when a minister has arrived at the point where he can invite the Prime Minister or the Minister of Foreign Affairs to a small dinner of six or eight persons, where conversation is free and unreserved, he may then feel that he is on a footing which will enable him easily to accomplish his diplomatic business.

We may see, therefore, that if for any reason, though it may be from an absurd prejudice, a minister is socially unpleasant to the government or to the society of the place, he is unfit to be a minister in that particular capital. It is partly for that reason that all governments have maintained their right to refuse to receive a particular person as minister, without giving any reasons; for these reasons may be as often on account of his lack of social qualification as on account of any political grievance against him. When a minister is for any reason disagreeable, while he may be received with all the formal politeness due to him whenever he appears in an official capacity; while he may be invited to court when the invitation could not be omitted without offence to the country which he represents, he may be entirely ignored in every other way; and in this state of social isolation he is certainly incapable either of properly representing his country or of giving proper protection to its interests. Take a recent case, which has excited some comment. A gentleman was appointed minister to Austria. The hints first given by

the Austrian government were not regarded, and his acceptance was urged; so that the Austrian government was finally obliged to decline peremptorily to receive him. One objection to him was a social one—that his wife was by birth a Jewess. However absurd such a race prejudice may seem, it is found that any attempt to go counter to it would result in the social isolation of the minister; and we might as well have no minister at all as a minister so placed. The court of Vienna is bound by very strict rules of etiquette, which not even the Emperor feels at liberty to overstep. And the society of Vienna has adopted still stricter ones. Although Hebrews have been received at the Austrian court, they have been received only *officially*, for there are now many persons of Hebrew race in the Austrian service, and their wives have not come within the official category. In order for an Austrian lady to be able to appear at court, she must show at least four generations of nobility. It is said that some years ago, when the first *bourgeois* ministers were appointed in Austria, while they were officially invited to a court ball their wives were omitted. The ladies were indignant, and brought a sufficient pressure to bear upon their husbands to induce them to resign their offices if their wives were not invited to the ball. The Emperor was in a dilemma, for he could not dispense with such useful ministers, neither could he override the rules of court etiquette. He adopted,

however, a very simple expedient—he ennobled the long-deceased great-grandfathers of the ladies in question, which thus gave them the personal right to appear. Such things have been done before; for Lord Malmesbury in his "Correspondence" mentions the fact that Potemkin, the favorite of the Empress Catharine II., was made a Prince of the Holy Roman Empire for three generations back.*

It is not only at Vienna that a similar spirit is shown. One of the present rules of the English court is that ladies who have been divorced, no matter whether innocent or guilty, cannot appear there. And for this reason the ambassador of a great power, still in service in another country, was rejected not long ago by the Queen, because he had married a lady divorced from a former husband. On account of the social complications often caused by imprudent marriages, it is a rule with some governments that no diplomatic official can marry, without the preliminary consent of his superiors; and it is known that Prince Bismarck strongly objects to German diplomatists marrying foreigners.

Ceremonial and social duties take up a large part of a minister's time; but those who have been noted as our best and ablest representatives have always been most punctilious in their performance. No one has ever served us better than Mr. John Quincy Adams;

* Lord Malmesbury's Diaries and Correspondence, i., p. 527. Senate Ex. Doc., No. 4, 49th Congress, 1st Session.

and yet we may see from his "Diary" that night after night he went into society, danced, played cards, talked, and ingratiated himself with the people about him. In spite of certain peculiarities derived from his Puritan ancestry, peculiarities which were sometimes disagreeable when they showed themselves, Mr. Adams was a man not only fond of society, but very popular in society; and, in a word, combined the most useful external diplomatic qualities with those of intellect, study, and experience.

It might be asked, then, what time has a minister left to attend to his particular diplomatic duties; and what duties in general does he have to perform? It is not everywhere and on all occasions that great diplomatic questions arise which require study or reasoning. In fact we might almost say that ministers are sent abroad in order to do nothing; *i.e.*, that by perceiving the drift of little things, watching for any slight event which may grow into a huge difficulty if uncared for, he may prevent great questions from arising. Ministers are, as it were, sentinels or outposts to prevent difficulties between nations. Naturally difficulties may arise which by no possibility could be prevented by a minister; and he is then called upon to do his best to settle them. We may have peaceful and tranquil relations with a country for thirty or even fifty years, with slight expectations of these relations being in any way disturbed, when suddenly,

owing to the fault or misunderstanding of a subordinate official, some question may arise which, in a certain state of public opinion, may almost bring about a war. Who, for instance, could have expected the outburst of popular feeling which nearly produced a war between Spain and Germany on account of the occupation of the Caroline Islands? Who can tell whether the sudden death of the King of Spain may not ultimately produce complications in that country which may extend to Cuba and cause us serious embarrassment, and new difficulties, hard to be solved without great tact and discretion on the part of our representatives? The suddenness with which an incident may arise is one reason why it is far better to have a representative on the spot than to trust to sending a special commissioner after the difficulty has arisen. A little tact may put to rest wounded feeling, and soothe national honor at the very beginning; while, if free play were left to party newspapers and home politicians in both countries, the quarrel might be so augmented that even a special commissioner would be unable to settle it.

But in the absence of great questions there are routine duties at most legations sufficient to occupy a good portion of a minister's time, if he understands his business. Naturally, where the minister, as too frequently happens, goes abroad with no knowledge of history, of foreign politics, or of languages, he is

unable to see a hundred little ways in which he may be of use to the United States, either by giving information or noting down precedents. There is a certain amount of daily work always to be done, either by the secretary of the legation, or by the minister, if there be no secretary. Despatches have to be written in certain specified forms; these despatches have to be copied regularly into books, and must be, in addition, registered. The despatches and letters received at the legation must also be registered, carefully filed, bound, and indexed, and a daily journal kept of business of any kind which may be transacted; memoranda must be written out and filed of conversations on public business with the Minister of Foreign Affairs, or with other persons.

As to despatches, a minister should write neither too much nor too little. If his pen be too facile, if he allow himself to comment too much on general politics, whether of Europe or of America, if his despatches be too long, they are apt to be left unread in the files of the Department, and the valuable information which he may send, being lost in a heap of rubbish, is unnoticed. At the same time he should not in general communicate to his government long accounts of unimportant events that may as well be learned from the newspapers. He should endeavor to fill his despatches only with what can*not* be learned from the newspapers as to the intentions, feelings,

and wishes of the government to which he is accredited, the springs of their action, and accounts of negotiations in which they are engaged, especially if in any manner they may concern his own country.

He should neglect nothing, however seemingly trifling at the moment, which may in any possible way affect the interests of his own country, whether in its policy or its commerce. There is no need to describe at length the opening of the legislative chamber, and certainly not court balls and other ceremonies, unless from some incident they derive unusual importance; but as it is always convenient for the State Department that the series of despatches from each capital should show in some way the political history of the country, it is of benefit to send printed copies of the royal speeches at the opening of Parliament, and notices of any change of ministry or of high officials, with accounts of the new persons coming into power.

Complaints of all kinds will continually be brought to a legation of acts of injustice toward American citizens, and the settlement of these is one of the minister's most important duties. Such complaints are naturally most frequent in countries which have not reached the highest stage of civilization, or where the laws are not regularly and impartially administered. A minister will generally try to arrange such little difficulties by personal conversation and appli-

cation to the proper officials, without making a written complaint to the Foreign Office, and thus making a formal business of them, except where they are very grave violations of our rights, and where a principle is involved that a minister himself is unable to settle unofficially. In such minor cases he would generally do well not to report his action to the Secretary of State until his unofficial applications have been acted upon; for when such a case is reported home, the State Department is naturally very cautious, and desires a thorough investigation of the matter before taking steps which might bind the Government, and the minister does not then feel authorized to act unless specially instructed from home. A man may suffer great injustice for a long time in a very simple matter, which might have been remedied at once while the minister was waiting for instructions. This is pure red tape, and giving too much importance to minor things.

The greater part of the complaints presented to our legations come from naturalized citizens, on account of supposed interferences with their rights. Certainly a naturalized citizen should be protected in the same manner as one of native birth; but unfortunately most of these complaints arise from the naturalized citizen having returned to the place of his birth, having got into difficulties with the government to which he formerly owed allegiance, and using his certificate

of naturalization simply as a means of evading his obligations to both governments. In Germany, for instance, this is very frequently the case. Young Germans are continually coming to the United States, getting naturalized, and then returning to Germany to pass the rest of their lives, having by this process escaped the obligations of military service. We have a treaty with Germany on the subject of naturalization, and our experience has been that the German government has always been ready to satisfy the request of the legation as a matter of courtesy, even when the equity of the complaint might be disputed. In fact, I think any one of our recent ministers to Germany would admit—when speaking privately—that nine-tenths of the complaints brought before them are on their face without equity and justice, though coming under the letter of the treaty, and should not really be attended to. Unfortunately our legal authorities maintain that a certificate of naturalization is in the nature of a judgment pronounced by a court; and that therefore it cannot be set aside except by the court itself, no matter how evident may be the fraud by which, or the fraudulent purpose for which, it was obtained.

Commercial difficulties are now those which are most frequent, and which give most work to our legations. In the year 1883 the United States exported to foreign countries six hundred and twenty-nine and

a quarter million dollars' worth of raw material, and one hundred and seventy-five million dollars' worth of manufactured goods. This is an amount sufficient to make a disturbance in the markets of the world; and with the protectionist policy which is growing in nearly all countries that are endeavoring to develop their manufactures, efforts of various kinds are being made by foreign governments to hinder this too great commercial rivalry of the United States. These efforts take different forms; sometimes by increase of the tariff; sometimes in more insidious ways by raising the freight tariff on railways for foreign goods, or by excluding certain articles on account of their being injurious to health. A minister should keep a watchful eye on all measures relating to commerce which may in any way affect our interests. He should not confine himself solely to dealings with the Foreign Office. That is his official mode of communication. But he should use the social position which he has been able to acquire for impressing upon deputies, statesmen, and even members of mercantile bodies, the dangers of such a course and the difficulties which might arise with his Government. In other words, he should endeavor to stifle these difficulties at the outset.

Perhaps the greatest annoyances which American ministers abroad have to endure are those caused by their travelling countrymen, who desire social assist-

ance and information. Many Americans suppose the legation and consulate to be offices of information for their own special benefit, to receive their letters and parcels, obtain tickets for them to galleries and museums, to act both as guide-book and courier, and ask and obtain invitations for them into general society and presentations at court. Many things are asked which could be obtained with perfect ease elsewhere; and it will depend on the tact and good-nature of the official himself as to how far he will allow such requests to annoy him. By compliance as far as possible with requests that are reasonable, by receiving letters, and having on hand a store of tickets, he will probably get through more easily than if he stood on his dignity and sent the applicants away disappointed and snubbed. As to introductions into society, the minister certainly should not be called to do anything of this kind. The only way in which he could reasonably present a travelling American to the social world in which he moved would be at his own house; and he should be allowed to choose the persons to whom he extends his hospitality. As to presentations at court, there is even still more difficulty. In some countries, where there are large numbers of persons to be invited to state balls and concerts, a minister is soon given to understand that it is preferred that he should not make requests for presentations. Other courts, where the society is more re-

stricted, are often very glad to receive foreigners; and there it is comparatively easy to obtain the presentation of a reputable and agreeable person. So great, however, has sometimes been the demand for presentations, that at some courts restrictive rules have been made in consequence.

It has been frequently maintained that the rapidity of communications and the general dissemination of news render the system of resident diplomatic agents useless; and it has been suggested that a secretary or a consul would be able to perform all the necessary work, unless some important question arose, when some one could be sent on a special mission to arrange the matter; or that the respective Ministers of Foreign Affairs could communicate directly with each other by telegraph, without the intervention of a third person. Even if this were the case, it would be impossible for us to inaugurate such a system without the consent of all the world.

"There is (as Wheaton says) no legal obligation to receive or send public ministers; but international assent to the system for a long period of time has given to the custom the force of an obligation upon all civilized powers, and it cannot be abandoned without the assent of nations. Diplomatic representation is a definite factor in the political economy of the world; and no better scheme has yet been devised for the despatch of international affairs, or for the preservation of friendly relations between governments.*"

* Report of Mr. Frelinghuysen, April 26, 1884, H. R. Ex. Doc. No. 146, 48th Congress, 1st Session.

Lord Palmerston expresses the present importance of diplomacy very well in the examination which has been before referred to. He was asked:

"Is not the necessity for a man of great talent and experience residing at a place to act for the government at home, much diminished since you have been enabled to communicate in the course of a day, and especially with the prospect of having by the end of this year the electric telegraph, by which you will be enabled to communicate with Paris in a quarter of an hour?"

Lord Palmerston replied:

"No, I do not think it is. I think it is equally important to have an able agent to represent you, whether he is one day or four or more days off; perhaps it is less at a great distance; events may occur which may, beyond doubt, either compel him to take great responsibility, or may subject him to delay in acting, unless he can get instructions. There is great advantage in having rapid communication. I apprehend that there is a very important difference between communications carried on by writing and communications carried on by personal intercourse. I should fear that communications carried on by writing would be more likely to end ill than communications carried on by personal intercourse. I should be very sorry to have to rely upon the accounts of 'our own correspondent.' The news of public events that have happened, no doubt comes as quickly by newspaper accounts as by official despatches; and it is for this obvious reason, that the newspapers find it for their interest to make very expensive arrangements for obtaining the earliest information of public events that occur. But the despatch of your minister or ambassador is not so much to tell you what has happened, as to inform you of the disposition and intentions of the government

with which he is in relation. That information you cannot receive from the correspondents in the newspapers."

Mr. Bright asked

"Whether it would not be practicable to transact the ordinary business by means of written communications between the two Foreign Offices, and when anything arose requiring particular attention to have a special mission of some member of the cabinet for the purpose of arranging whatever might be required to be arranged."

Said Lord Palmerston:

"I do not think it would: there are daily and weekly matters that require personal communication. Everybody must know the extreme difference there is between personal communication between men who are in the habit of intercourse, and the exchange of letters written by men who, perhaps, never saw each other. The practice at present existing in diplomacy combines the two, because it frequently happens that a despatch is written by a government to its diplomatic agent at a foreign court, which despatch he is to communicate to the court just as it is written, accompanying it with such verbal explanations as he may be instructed also to give."

Subsequently Mr. Cobden said:

"If you go back two or three hundred years ago, when there were no newspapers; when there was scarcely such a thing as international postal communication, when affairs of State turned upon a court intrigue, or the caprice of a mistress, or a Pope's bull, or a marriage, was it not of a great deal more consequence at that time to have ministers at foreign courts, who, in the first place could furnish you with all necessary information of what was going on, and who could,

in the next place, influence those individuals upon whose will the destinies of Europe so greatly depended? Was it not of much more importance to have highly paid ministers of England at foreign courts than it is in these constitutional times, when all affairs of state are discussed in the public newspapers and in the legislative assemblies, and when every incident that occurs is reported in *The Times* newspaper sooner even than you can have it in the Foreign Office by your ambassadors or couriers? Under these circumstances are not the functions of an ambassador less important now than they were two or three hundred years ago?"

Lord Palmerston replied:

"I should humbly conceive that they are more important on account of the very circumstances which have just been stated; because when the affairs of a country were decided by the caprice of a mistress, by a back-stairs intrigue, or by a Pope's bull, it is obvious that your ambassador could have very little influence in directing any of these operating causes; and therefore all he could do would be to let you know, if he could find it out, how those secret causes were acting. But in proportion as those causes were secret, it was more difficult for him to arrive at a knowledge of these. In these days, as is well stated in the question, the conduct of governments is influenced by public opinion, by what passes in deliberative assemblies, and by international considerations, rather than by personal caprices and passions; and it is precisely that kind of consideration which an ambassador can bring under the notice and press upon the attention of another government. Your ambassador can tell the minister of a foreign country that your interests are so and so; that the public opinion of your country runs in a certain direction, and has obtained a certain height; that there are certain things that your government can do, and certain things that it can not do; and by making the minister of that country

aware of what are considered the interests of England, and what is the prevalent public opinion of England, and what are the influences which control, direct, or interfere with the English government, he places under the consideration of the government to which he is accredited matters which may greatly influence the conduct of that government with regard to things which may involve questions of peace and war; which, at all events, may involve questions deeply affecting the commercial interests of the country, and therefore, I should think that the change which has taken place with regard to the transaction of public affairs in Europe tends to make diplomatic agents of more importance rather than of less importance."*

Among the various efforts to reduce the expenditure of our foreign service, and, as some have thought, to increase its efficiency, it has been proposed that we might have two or three great missions on each continent, the chiefs of which could go from one country to another as special business arose. This proposal is not impossible to carry into effect, in spite of long distances. In Europe, for instance, the countries might be grouped together in such a way that four or five ministers could do the whole of the work. But here a difficulty would arise which would destroy the expected advantage. These ministers would necessarily have to travel from one country to another, residing for a few months in each country to which they are accredited, in order to become acquainted with the leading men and the run of public affairs. For that

* Senate Ex. Doc., No. 93, 32d Congress, 1st Session.

purpose they should be paid large salaries. It would also be necessary to have on the spot in each capital a secretary of legation, who could act as chargé d'affaires and inform the minister when it was necessary to have his personal presence. The resultant of all these expenditures could not be less than the amount now spent; although it would enable us to pay our ministers much better than they are now paid. There would perhaps be the disadvantage that none of the countries to which our minister was accredited would feel quite as well disposed to the United States as if a special minister were kept at each capital. They would reason, perhaps rather loosely, but with a show of argument on their side: "The United States is a very great and a very rich country. What difference does a few thousand dollars more or less make to you? You waste far more than that sum on public buildings and river and harbor bills. If you show politeness to us at all—and you seem to put it in that way rather than from any advantage it is to yourselves—it would be better to show politeness in the way that we appreciate, and not with a niggard hand."

After all, it is for each country to choose the way in which it shall be served; and if, for the purposes of efficiency, for reducing the number of officials, for increasing salaries, or for economy, or even for making a concession to a strong—though I maintain wrong and uninformed—public opinion as to the use

and necessity of a diplomatic service, it is a question simply of policy and expediency. But there are many examples of such combinations. We now combine the missions to Greece, Roumania, and Serbia. We have one envoy accredited to the five republics of Central America; so do Germany, Great Britain, France, and Spain. We have a chargé d'affaires to Uruguay and Paraguay, though those two countries are many hundred miles apart. Other countries do the same thing, Great Britain and France accrediting each an envoy to the Argentine Republic and Paraguay—a more natural combination; Chili to Uruguay and the Argentine; and Austria, Germany, Peru, Portugal, and Sweden having each one representative accredited to the three countries, the Argentine Republic, Paraguay, and Uruguay. The English minister and the Italian chargé d'affaires to Peru are accredited also to Bolivia. Italy combines China and Japan; Austria and Portugal combine China, Japan, and Siam; Great Britain combines China and Corea. Even in Europe this practice is not unknown. Belgium, Holland, Spain, and Portugal each combine Sweden and Denmark into one mission; Roumania and Sweden have each one minister accredited to Belgium and Holland; Turkey accredits the same minister to Sweden and Holland; Greece to England and Holland; Serbia to France and Belgium; Mexico to Spain and Portugal; and Great Britain has

accredited the consul-general at Scutari in Albania as minister to Montenegro.*

It has been also suggested that we entirely dispense with the diplomatic service, and confide diplomatic functions to the consular officers at the various capitals. Now this proposition has an appearance of reason. In many cities there is not so much business, consular and diplomatic together, that it could not be done by the same person, or at least by the same office. There can be no reason why in most of the capitals of the world the minister could not be charged with consular duties, or at least one of the secretaries. Those duties are generally distinct from diplomatic ones but they might easily be combined in one person. But between charging a minister with consular duties and a consul with diplomatic duties, there is a great difference. A minister would have only so much added to his daily work; a consul would, as may be seen from what has already been said, be placed in a very different situation from that of an ordinary consul. According to rules now recognized by all the world, including the United States, a consul thus charged with diplomatic duties would be recognized as a chargé d'affaires, and would be subject to all the official and social burdens of diplomatic life, without receiving proper compensation, and possibly with-

* These examples are all taken from the last edition of the official *Almanach de Gotha.*

out proper preparation. We would expect our diplomatic representatives always to be in subordinate position, and in most countries a consul-general chargé d'affaires ranks below chargés d'affaires proper; and yet demand from them results which can be achieved only by men who stand in the highest positions. They would neither have power nor dignity, but would be saddled with all the duties of ministers, with, of course, less pay.

In deference to this feeling of simplifying our representation abroad, there have been various cases where consular and diplomatic powers have been united in the same person. Our ministers to several countries—Switzerland, Portugal, Denmark, Greece, Roumania, and Serbia, and some of the South American countries—are consuls-general as well; and this has not been found to work badly.* Their consular duties have not hindered their diplomatic work, nor injured their social position. Their diplomatic position, in small capitals, by no means prevents their knowing the heads of the mercantile world; on the contrary, it assists in it, and they have every opportunity to understand our commercial needs in those countries, and the peculiar conditions under which our

*They have, indeed, one natural advantage over those who are exclusively ministers. They receive their allowances for office-rent and contingent expenses according to consular and not according to diplomatic rules.

trade is carried on. In the same way, in some other cities, such as Madrid, Rome, Vienna, Constantinople, the office of consul-general has been at times united with that of secretary of legation. In Constantinople, and this I may say from personal experience, there was a decided gain to our service from the union of the two offices, making one head instead of two. In Madrid, where the consular business is small, this was equally the case. It would have been true also in all of the small capitals of Europe, and even in St. Petersburg and Rome. In Vienna the consul-general had too much business to allow him to perform the duties of secretary of legation also, and neither here nor in capitals like Paris, London, or Berlin, could this union have been effected unless there were one or two other secretaries of legation to perform the necessary work. The diplomatic title would in that case be given to the consul-general simply for social reasons, as it would obtain for him a higher standing in the society of the place. At Rome alone, of all places where this union was tried, were there objections from the government of the country: the Italian government refused to accept the consul-general as secretary of legation. It is impossible to judge of the action of the Italian government in this case without knowing exactly in what manner the proposition was put to them. If, when it was proposed, it was hinted in any way that such a union would be disagreeable to the legation, the Ital-

ian government, out of regard to the legation, might have refused. It certainly could not have done so on principle; for in several of the states of South America the Italian government unites its chief diplomatic and consular functions in the same person; and it could hardly have maintained that what was good for America was not good also for Rome.* Perhaps it might have been different if the case had been reversed, and the secretary named consul-general.

Such unions, are however, no novelty; for while in most countries the consular and diplomatic services are kept in a measure distinct, in all countries persons not unfrequently pass from one to the other. Some of the most distinguished men in the diplomatic service of all countries have been originally subordinates in the consular service. There was a time in St. Petersburg when both the English and the German consuls were secretaries of legation. Even now the Austrian consuls-general at London and Paris have the rank of minister resident, and are directors of the Commercial Chancery of the embassy. In Paris the English consul is a member of the embassy. In Morocco, Persia, China, and Japan the English envoy extraordinary and minister plenipotentiary is at the same time consul-

* Italy maintains in Morocco a minister resident, who is also consul-general; in Chili, Guatemala, Mexico, Peru, and Uruguay consuls-general, who are also chargé d'affaires, and in Paraguay a consul and chargé d'affaires.

general. In Peru, New Grenada, Ecuador, Chili, Hayti, Central America, and Uruguay, the English ministers resident are also consuls-general, and the commissioner to the Sandwich Islands also performs consular duties. In Washington, the Danish and Swedish ministers are also consuls-general; in Central America, Ecuador, Siam and Uruguay, the French chargé d'affaires is consul-general; in the Argentine Republic, the Austrian minister and the Belgian chargé d'affaires, are consuls-general; in Bolivia and Uruguay, the Spanish chargé d'affaires is consul-general; in Brazil, the Venezuelan chargé d'affaires is consul-general, though Venezuela has refused to accept the minister of the United States in a dual capacity; in China, the Dutch minister is consul-general; in Corea, the Russian minister is consul-general; in Hawaii, the French and Portuguese commissioners are consuls-general; in Japan the Portuguese chargé d'affaires is consul-general; and in Portugal, the Swedish minister is also consul-general. In several other countries, ministers or some members of the legation perform the duties of consuls-general without bearing the title.

Owing to the habit of considering our missions abroad simply as convenient places to dispose of political partisans who are desirous of obtaining a good sinecure, or who have failed of re-election by their constituents, our legations have generally been classi-

fied according to the amount of salary paid to them, although this should be considered simply as an equivalent for the various expenses necessary in different places. I should be disposed to arrange our missions abroad very differently, according to their relative importance. In the first place naturally comes England, not only because England is the country nearest allied to us by blood and by commercial interests, but because along our whole northern frontier extends an English possession, and English colonies surround us on every side. We have commercial difficulties, difficulties with fisheries, difficulties with Indians on the frontier, and difficulties with our own citizens of Irish birth who naturally sympathize with their native country. Next to this, for a similar reason, should come Spain, on account of the Spanish colonies of Cuba and Porto Rico lying near us, of the commercial restrictions which we are under with those colonies, and of the danger of annexation which every disturbance there brings nearer us. After this come Mexico, the countries of Central and South America, where we wish to preserve a political as well as a commercial predominance, and to prevent enterprises of European powers; the Hawaiian Islands, which we are bound to regard always as an outlying part of America; Eastern Asia, China, Japan, and Siam, where we have large commercial interests capable of being greatly increased. After these only

should come Germany, the first of all European states not mentioned, on account of the number of Germans naturalized or domiciled in this country, the great commerce, and the difficulties arising from both. After Germany are France, the rest of European countries, Africa, and Persia.

There are at present in the diplomatic service of the United States fifteen envoys extraordinary and ministers plenipotentiary, sixteen ministers resident, twelve of whom are also consuls-general, one chargé d'affaires (to Paraguay and Uruguay), and one diplomatic agent and consul-general (to Egypt). We have representatives in every independent and semi-independent country of Europe, except Montenegro and Bulgaria; in every country of South America, except Ecuador; and in all those parts of Asia and Africa with which we have any relations. Why Ecuador should be omitted is very hard to say. We have recently had a difficulty with that country, which was aggravated by the lack of a diplomatic representative on our side, for Ecuador maintains one here. We finally settled the dispute by a display of naval force, and thus set a very bad precedent for other countries to follow in dealing with the American republics. In Bulgaria the presence of a consular officer possessing diplomatic powers, *i.e.*, a diplomatic agent and consul-general (the form usual in semi-independent countries), is necessary for the interests of our commerce

and for the protection of Americans and their property; for there are more Americans established in Bulgaria than in Roumania and Serbia combined. Now that Montenegro has a port on the Adriatic, the minister to Greece could also be accredited to that country, without adding greatly to his duties.

The total cost of our diplomatic service during the fiscal year ending June 30, 1885, was $410,246.66. The sum of $3,834 was taken in for passport fees. The cost of the British diplomatic service for the fiscal year ending March 31, 1884, was $1,205,654. The following comparative table will show the rank and salaries of the chief diplomatic officers of the United States, Great Britain, and France.

These salaries do not, however, represent entirely the differences, for while the allowances to our ministers for office-rent and for the contingent expenses are very small, those in the English and French services are very liberal. Their ministers either have an allowance large enough to enable them to hire a comfortable and convenient house (not office), or have the use of a house belonging to the government. In Constantinople, for example, the English government owns two large houses, almost palaces, one in town and one in the country on the Bosphorus. So also do France, Germany, Russia, and Italy. Nearly every other government but our own has at least one. So in many capitals of Europe; and in the extreme East

	United States.	England.	France.
Great Britain	e. $17,500	.....	a. $40,000
France	e. 17,500	a. $50,000	.....
Germany	e. 17,500	a. 35,000	a. 28,000
Russia	e. 17,500	a. 39,000	a. 50,000
Austria-Hungary	e. 12,000	a. 40,000	a. 34,000
Italy	e. 12,000	a. 35,000	a. 22,000
Spain	e. 12,000	e. 30,000	a. 24,000
Turkey	e. 10,000	a. 40,000	a. 26,000
Belgium	m. 7,500	e. 17,400	e. 12,000
Netherlands	m. 7,500	e. 18,000	e. 12,000
Sweden	m. 7,500	e. 15,000	e. 10,000
Denmark	m.c. 5,000	e. 15,000	e. 10,000
Portugal	m.c. 5,000	e. 20,000	e. 12,000
Switzerland	m.c. 5,000	e. 6,250	a. 12,000
Greece	m.c. 6,500	e. 17,500	e. 12,000
Roumania		e. 10,000	e. 10,000
Serbia		m. 6,000	e. 7,000
Bulgaria	.....	ag.c. 6,000	ag.c. 6,000
Hayti	m.c. 5,000	m.c. 6,000	e. 6,000
San Domingo			
Mexico	e. 12,000	e. 15,000	e. 16,000
Central America	e. 10,000	m.c. 10,000	ch.c. 6,000
Colombia	e. 7,500	m.c. 10,000	ch.c. 6,000
Venezuela	m.c. 7,500	m. 10,000	c. 6,000
Brazil	e. 12,000	e. 20,000	e. 16,000
Uruguay	ch. 5,000	m.c. 8,000	ch.c. 6,800
Paraguay		e. 15,000	e. 14,000
Argentine	m.c. 7,500		
Chili	e. 10,000	m.c. 10,000	e. 10,000
Peru	e. 10,000	m.c. 10,000	I. 10,000
Bolivia	m.c. 5,000	.....	.....
Ecuador	.....	m.c. 7,000	ch.c. 5,200
The United States	.....	e. 30,000	e. 16,000
Sandwich Islands	m. 7,500	com.c. 5,500	com.c. 4,200
Japan	e. 12,000	e.c. 20,000	e. 16,000
China	e. 12,000	e. 30,000	e. 17,000
Corea	m.c. 5,000		
Siam	m.c. 5,000	ag.c. 8,000	com.c. 5,000
Persia	m.c. 5,000	e.c. 25,000	e. 12,000
Liberia	m.c. 5,000	.....	.....
Morocco	c. 2,000	e.c. 10,000	e. 6,400
Egypt	ag.c. 5,000	ag.c. 12,500	ag.c. 10,000
Congo	ag. 5,000	.....	.....

NOTE.—In the above table a. = ambassador; e. = envoy extraordinary and minister plenipotentiary; m. = minister resident; c. = consul-general; ag. = diplomatic agent; ch. = chargé d'affaires; com. = commissioner. The salaries are calculated, for convenience, at the rate of five dollars to the pound sterling, and five francs to the dollar.

this practice is universal, there being no other way of providing for the legation. Our Government owns houses only in Siam and Morocco, but the need of them is urgent in China and Japan. Owing to the constant rise of property in all large cities the purchase of legation-houses would not be bad simply as an investment. English ministers also have an outfit in order to enable them to install themselves properly at their posts. This is calculated on a liberal scale, being, for example, $20,000 for Paris; $12,500 for Vienna, Berlin, and St. Petersburg; $10,000, for China, Japan, and Persia, Madrid and Washington, and never being less than $2,000. These are the figures for the outfit in case of an original appointment. On promotion the outfits are only two-thirds of these amounts, and only one-half on a mere transfer.

In the early part of our Revolution the salary of a minister plenipotentiary was £2,500, equal to $11,100, besides which he sometimes had an allowance for house-rent. This was reduced on account of the embarrassed state of our finances, and subsequently the salary of a full minister was generally $9,000; that of a minister resident or chargé d'affaires was $4,500. Each was allowed one-half of a year's salary as outfit on going to his post, and one-quarter of a year's salary as return allowance on coming home. Although these were necessary and very proper allowances, they were productive of abuses, owing to the want of a

fixed tenure of office. It was possible for an administration to reward a partisan by appointing him to a foreign mission, and by recalling him, or allowing him to resign after a year's nominal service, or even less, during which he was often absent from his post, or lived cheaply in a hotel or boarding-house. In this way, with considerable time spent in going and coming, by not resigning until he had reached America, and had enjoyed his leave of absence, with his outfit and infit, a minister might have the salary of two years for what was really a pleasure trip, with but a few weeks spent at his post of duty. The mission to St. Petersburg of John Randolph of Roanoke is a notorious instance of this abuse. It was customary, also, to allow about a year's salary to a minister sent for special reasons, as to negotiate a treaty, to a country to which he was not originally accredited, in addition to his expenses. In this way a chargé d'affaires at Buenos Ayres, with a salary of $4,500, received for special services in making treaties with Paraguay and Uruguay, the whole work of which was done by his colleagues or friends, the sum of $14,-3; and a minister at Constantinople, with a salary of $6,000, received $9,000 for a few weeks' services in Greece, whither he had been sent to arrange for the payment of an unjust claim of a missionary who had acted as consul. A consul-general to Japan, in 1856, was allowed $10,000 for concluding a treaty with

Siam. The law of 1856 abolished outfits, and increased the salaries of the ministers to about the point at which they are now fixed. In some cases, as at Copenhagen, Lisbon, and Berne, these salaries have been reduced since that time by a third. Such, however, is the traditional power of an ancient abuse that many people still believe that a minister holds a sinecure, and that the position is one without responsibility, which is to be sought for the opportunity of making money, or for taking a pleasure trip at the expense of the Government.

There appear to have been no appropriations for the salaries of secretaries of legation before the year 1831. Up to that time each minister was supposed to pay his own secretary, and he therefore considered the copies of his despatches, as well as his instructions, to be his personal property, and took them away on leaving his post. From reports made in 1832 we find that there were no records in the legation at London prior to 1826, nor in that at Paris prior to 1810, nor in that in St. Petersburg before 1823.* By the law of 1856 the salaries of secretaries of legation were fixed at fifteen per cent. of the salaries of the ministers, that is, from $1,500 to $2,625. The salaries of second secretaries of legation, or assistant secretaries, as they were at first called, are $2,000 each. Secretaries have no outfit nor allowances of any kind,

* H. R. Ex. Doc., No. 94, 22d Congress, 2d Session.

and must pay their own travelling expenses. When acting as chargé d'affaires *ad interim*, they receive an amount equal to one-half of the minister's salary for that time, during which, however, their own pay ceases. In the English service the secretaries are divided into four classes, and receive from $725 to $5,000 yearly, besides an outfit varying from $725 to $2,000 to the two higher grades, and an allowance to secretaries of embassy at from $500 to $1,000 for house-rent. Their travelling expenses are paid on their appointment, transfer, or promotion. When acting as chargé d'affaires a secretary receives in addition from $5 to $30 a day, which is deducted from the salary of the minister. Besides this, a secretary of legation, after ten years' service as such, receives an additional $1,250 a year. Secretaries also have an additional allowance of $500 yearly if they have passed a satisfactory examination in Public Law, and the same amount for a knowledge of Russian, Turkish, Persian, Japanese, or Chinese, when serving in the countries where any of those languages are used.

One result of a regular service is that in most countries diplomatic and consular functionaries who become incapacitated by age or illness, are entitled to pensions, regulated partly by the positions they have held and the length of time they have served. In the English service the age for retirement is fixed at seventy. In England these pensions are paid out of

the Treasury; but in some other countries they are of slight cost to the government, because paid from a pension-fund, which is made up in great part by the retention of a certain percentage of the salary of each official. The British diplomatic pensions are of four classes—at $8,500, $6,500, $4,500, and $3,500 annually; but, as there are not very many persons who are on the lists, the amount now being paid for diplomatic pensions is only $132,250, and for consular pensions $145,500.

Enough has been said to show the utter inadequacy of the present salaries paid in our diplomatic service; but it may be interesting to quote the opinions of some eminent men, who lived at a time when expenses were less, and the purchasing power of money was greater, and who were all above questions of personal interest.

In a report made to President Jackson in 1833, by Edward Livingston, then Secretary of State, the whole of which is worth attentive study,* it is said:

"Ministers are considered as favorites, selected to enjoy the pleasures of foreign travel at the expense of the people; their places as sinecures; and their residence abroad as a continued scene of luxurious enjoyment. Their exertions, their embarrassments, their laborious intercourse with the governments to which they are sent, their anxious care to avoid anything that might, on the one hand, give just cause of offence, or to neglect or to abandon the rights of their

* H. R. Ex. Doc., No. 94, 22d Congress, 2d Session.

country or its citizens, on the other, are all unknown at home. Even the merit of their correspondence, from which, at least the reward of honor might be derived, is hid in the archives of the Department and rarely sees the light; and, except in the instances of a successful negotiation for claims, a minister returns to his country, after years of the most laborious exertion of the highest talent, with an injured, if not a broken fortune, his countrymen ignorant of his exertions, and undervaluing them, perhaps, if known. On the whole, there is scarcely an office, of which the duties, properly performed, are more arduous, more responsible, and less fairly appreciated than that of minister to a country with which we have important commercial relations. Yet there is some reason to believe that appointments to them are sometimes eagerly sought from the same false ideas of the nature of the employment. To these mistaken ideas, more or less prevalent, may be traced many of the evils which have operated, and still operate injuriously upon the interests and reputation of the country. . . .

"At home the head of every subordinate bureau attached to any of the departments, has an office, and a messenger, and clerks, and fire and stationery, and lights, and every convenience for carrying on the business entrusted to him. This is as it should be. But, to represent the dignity of the country, and on a scanty salary to transact its most important concerns abroad, we send a man whom we provide with none of these necessaries for the transaction of his business; we force him to do all the drudgery of the office with his own hands, and either to live in some obscure place, where his countrymen blush to find him fixed, when, after some difficulty they have discovered his tavern residence; or, at the expense of his own fortune, to provide what is necessary for the interest and dignity of the Government. The usual answer to these representations is that, notwithstanding all these inconveniences,

candidates are always found eagerly seeking these appointments. But it must be remarked that these candidates are of two kinds. First, men of wealth, who are willing to purchase the honor of the station at the expense of their private fortunes. But although these are not always the fittest, in other respects, for the place, they are sometimes selected, and their appointment is popular, because there seems to be no objection to a minister's keeping up a decent appearance, provided he does it at his own expense. Secondly, there are others, who seek these appointments, because they make false calculations on the consequences. They resolve to be very economical, to live within their income, and to be drawn into no extravagance. But, on arriving at their place of destination, they find that expenses which might, with prudence, have been avoided here, are inevitable abroad. Civilities are received which must be returned; strangers are introduced who must be entertained; their countrymen call on them, and must be treated hospitably. In short, they find themselves obliged to live as others do; or, to forego all the advantages which social intercourse would give them in the business of their mission. The consequence is, that all our ministers return with impaired fortunes, however firm their resolutions have been to avoid unnecessary expense. It is possible there may be exceptions; but they are certainly very rare. . . . If the mission is useful it ought to be supported at the public, not at private expense; and the representatives of a great nation ought not to be obliged to employ, in devising parsimonious expedients for their support, that time and those talents which ought to be occupied in the service of their country."

In a letter to Monroe, dated at Paris, June 17, 1785, Thomas Jefferson says:

"I thank you for your attention to my outfit; for the articles of household furniture, clothes, and carriage, I have al-

ready paid 28,000 livres, and have still more to pay. For the greatest part of this I have been obliged to anticipate my salary; from which, however, I shall never be able to repay it. I find that by a rigid economy, bordering, however, on meanness, I can save, perhaps 500 livres a month, at least in the summer. The residue goes for expenses, so much of course and of necessity, that I cannot avoid them, without abandoning all respect for my public character. Yet I will pray you to touch this string, which I know to be a tender one with Congress, with the utmost delicacy. I had rather be ruined in my fortune than in their esteem. If they allow me half a year's salary as an outfit, I can get through my debts in time. If they raise the salary to what it was, or even pay our house-rent and taxes, I can live with more decency."

Mr. John Adams wrote to Mr. Jay, in relation to his appointment as minister to England:

"There is a certain appearance in proportion to rank, which all the courts of Europe make a serious point of exacting from everybody who is presented to them. I need not say to you, sir, because you know it perfectly, that American ministers have never yet been able to make this appearance at court; they are now less able to do it than ever. I lament this necessity of consuming the labor of my fellow-citizens upon such objects, as much as any man living; but I am sure that debasing your ministers so much below their rank will one day have consequences of much more importance to the husbandman, artisan, and even laborer."

Mr. John Quincy Adams, writing from London, in 1815, to the Secretary of State, says:

"It is needless to say to you, or to any person having been in the same capacity here, that the annual salary of an Ameri-

can minister is insufficient to support a man with a family—I say not in the style of high official rank, but in the decency becoming a private gentleman."

Mr. Monroe, in a letter to the auditor in 1820, says:

"The reasons in favor of an increase of the salaries of our ministers abroad are as strong as for an increase of that of those at home, if not much stronger; and there is one reason, of great force, which is peculiarly applicable to the former. The spirit of our Government, and the manners of our people, not only authorize, but inculcate economy at home in the expenditure of our public functionaries; but that indulgence cannot be enjoyed by those at home, however consonant it may be to their habits and inclinations, or necessary to their circumstances."

Mr. McLane, who had been minister to Great Britain, said in his Report as Secretary of the Treasury, in 1831:

"At some foreign courts, and those whose relations to the United States are the most important, the expenses incident to the station are found so burdensome as only to be met by the private resources of the minister. The tendency of this is to throw those high trusts altogether into the hands of the rich, which is certainly not according to the genius of our system."

Such quotations might be indefinitely multiplied. The Report of Mr. Webster, in 1852, is full of similar statements.* Since that time, as has been said before,

* Senate Ex. Doc., No. 93, 32d Congress, 1st Session.

the expenses of living, in all the capitals of Europe, have increased by from fifty to two hundred per centum.

I allow myself, however, one further quotation, which is both interesting and authoritative, from a private letter of Mr. Wheaton :

"The Austrian cabinet is on the point of forming a new commercial union with the states of Northern and Central Italy, and it should be the duty of our minister at Vienna to keep watch of this movement and turn it to our advantage. If Mr. Calhoun could have seen with his own eyes how badly our affairs have been managed for years in the different European courts, from ignorance of official forms and of that language which is the universal tongue of diplomacy, without which a diplomatist might as well be deaf and dumb, as well as from the lack of that experience which, in our profession as in every other, gives a decided advantage to those who possess it, he would be convinced of the importance of having the *principal missions*, at least, occupied by men who possess these qualities. At least those who unite the desired qualities ought to be employed where they can do most service, while incapable men should be turned out without favor or partiality. Those who have served the country faithfully and skilfully ought to be encouraged and transferred from one court to another, which is the only advancement that our system admits of. The only way of making up for the insufficient salaries given under our system would be to vote new outfits, for those who have deserved them, whenever the interest of the country would justify and demand their transfer to another post. Such is my way of looking at things ; it is the result of much observation and reflection.

"I believe that there is still much to do to advance our

political and commercial interests in Europe, and nothing vexes me more than to hear an American minister say, whatever the court may be to which he is accredited, "There is nothing to do *here*," or "Nothing *can* be done." I do not know a post, whether important or not, which could not offer a zealous, active, and skilful agent the opportunity of doing something for the interests of his country."*

* Wheaton's Letter of May 15, 1836, Lawrence's *Commentaire*, i., 83.

PART II.

AMERICAN DIPLOMATIC EFFORTS TO PROTECT COMMERCE AND NAVIGATION.

IV.

THE PIRATICAL BARBARY POWERS.

Necessity of Protecting Merchant Vessels in the Mediterranean.—Our Situation after the Revolution.—Application to France.—Mr. Adams and the Tripoline Ambassador.—Adams for Tribute, Jefferson for War.—Treaty with Morocco.—Lamb at Algiers.—The Mathurins.—Effect upon us of the Peace between Portugal and Algiers.—The American Captives.—Donaldson's Treaty with Algiers in 1795.—Its Cost.—The Dey.—Treaty with Tripoli.—Eaton's Negotiations with Tunis.—War with Tripoli.—Lear's Treaty.—War with Algiers.—Decatur.—Lord Exmouth.—New Treaty with the United States in 1816.

So many changes have taken place during the present century that it is difficult for us to realize that only seventy years ago the Mediterranean was so unsafe that the merchant ships of every nation stood in danger of capture by pirates, unless they were protected either by an armed convoy or by tribute paid to the petty Barbary powers. Yet we can scarcely open a book of travels during the last century without mention being made of the immense risks to which every one was exposed who ventured by sea from Marseilles to Naples. The French

dramatist Regnard was captured on an English ship going from Civita Vecchia to Toulon, and served for a time as a slave in Algiers at the end of the seventeenth century; and Jacob Leisler, who played such an important part in the early colonial history of New York, suffered the same fate before his arrival in this country. To go much further back, the great Cervantes was a slave in Algiers during four years. We all remember how Goethe in his Italian journey waited a long time at Naples for the corvette which made the fortnightly passage between that place and Palermo, and how afterward at Palermo he tells us of seeing the Prince Pallagonia walking through the streets with his footman, taking up contributions for the purpose of ransoming captives in Barbary. "This collection never produces much," he says, "but the subject remains in men's memories; and those who have held back during their lifetime often leave large sums for this purpose at their death."

The European states, in order to protect their commerce, had the choice either of paying certain sums per head for each captive, which in reality was a premium on capture, or of buying entire freedom for their commerce by the expenditure of large sums yearly. The treaty renewed by France, in 1788, with Algiers, was for fifty years, and it was agreed to pay $200,000 annually, besides large presents distributed according to custom every ten years, and a great sum

given down.* The peace of Spain with Algiers is said to have cost from three to five millions of dollars. There is reason to believe that at the same time England was paying an annual tribute of about $280,000. England was the only power sufficiently strong on the sea to put down these pirates; but in order to keep her own position as mistress of the seas she preferred to leave them in existence in order to be a scourge to the commerce of other European powers, and even to support them by paying a sum so great that other states might find it difficult to make peace with them.

When the Revolution broke out we no longer had the safeguards for our commerce that had been given to us by England, and it was therefore that in our very first negotiations for a treaty with France we desired to have an article inserted into the treaty that the King of France should secure the inhabitants of the United States, and their vessels and effects, against all attacks or depredations from any of the Barbary powers.† It was found impossible to insert this article in the treaty of 1778, and instead of that the king agreed to "employ his good offices and interposition in order to provide as fully and efficaciously as possible for the benefit, conveniency, and safety of the

* Report of Mr. Jefferson, December 28, 1790, State Papers, x., 45.

† Secret Journals of Congress, ii., 10, 28.

United States against the princes and the states of Barbary or their subjects." *

According to a report made in 1790 by Mr. Jefferson, when Secretary of State, "before the War of Independence, about one-sixth of the wheat and flour exported from the United States, and about one-fourth in value of their dried and pickled fish, and some rice, found their best markets in the Mediterranean ports." There were then employed in the trade about twenty thousand tons of navigation and twelve thousand seamen.† Owing to the Revolution this trade ceased for some time entirely; but after we had gained the right to fish on the Banks, our merchant vessels began again to go to the Mediterranean, and the trade revived. This could not but be noticed by the Barbary rulers, who saw a strange flag, hitherto unknown, and which certainly had paid no tribute to them, coming gradually into the Mediterranean.‡ In July, 1785, the schooner Maria was taken, off Cape St. Vincent, by an Algerine corsair, and five days afterward the ship Dauphin was taken by another Algerine, fifty leagues westward of Lisbon. The officers and crews, twenty-one persons in number, were reduced to slavery; although the captains were far better treated than the men.§ One vessel, the brig

* Treaty of 1778, Article VIII. † State Papers, x., 42.
‡ Lyman's Diplomacy of the United States, ii., 339, 340.
§ State Papers, x., 56.

Betsy, had indeed been captured the year before and carried into Tangier, but the crew had been liberated through the good offices of the Spanish court.* In concluding his report Mr. Jefferson said :

"It rests with Congress to decide between war, tribute, and ransom, as the means of re-establishing our Mediterranean commerce."

Already, in May, 1784, Congress had authorized a commission to be issued to Mr. Adams, Dr. Franklin, and Mr. Jefferson, empowering them either directly or through commissioners to treat with the Barbary powers. In March, 1785, these commissioners applied to the French minister, Count de Vergennes, asking his advice about the conduct of negotiations, and requesting the good offices of Louis XVI. to be interposed with the Emperor of Morocco. After Franklin had returned to America, in July, 1785, Adams and Jefferson, finding their hands full with European negotiations, appointed Thomas Barclay to negotiate with Morocco, and John Lamb to negotiate with Algiers. A few months afterward Jefferson was persuaded to go to London and meet Abdurrahman, the Tripolitan ambassador, with whom Mr. Adams had already had some discussion. Mr. Adams' account of these preliminary conferences is amusing. He writes to Mr. Jay:

* Jefferson's Works, i., 428.

"At a late levee the king, in conversation with one of the foreign ministers, was pleased to say 'that the Tripoline ambassador refused to confer with his ministers, and insisted on an audience; but that nothing had been said at it more than that Tripoli and England were at peace, and desirous to continue so.' His Majesty added, 'All he wants is a present, and his expenses borne to Vienna and Denmark.'

"If nothing more was said at the audience, there are not wanting persons in England who will find means to stimulate this African to stir up his countrymen against American vessels. It may reasonably be suspected that his present visit is chiefly with a view to the United States, to draw them into a treaty of peace, which implies tribute, or at least presents; or to obtain aids from England to carry on a war against us. Feeling his appearance here to be ominous, like that of other irregular bodies, which, 'from their hair shake pestilence and war.' I thought at first to avoid him; but, finding that all the other foreign ministers had made their visits, and that he would take amiss a longer inattention, it was judged necessary to call at his door for the form; but, when the attempt was made, which was last evening, so late that there was no suspicion of his being visible, the ambassador was announced at home, and ready to receive the visitant. It would scarcely be reconcilable to the dignity of Congress to read a detail of the ceremonies which attended the conference; it would be more proper to write them to harlequin, for the amusement of the gay at the New York theatre.

"It is sufficient to say that his Excellency made many inquiries concerning America, the climate, soil, heat, cold, etc., and observed, 'It is a very great country, but *Tripoli is at war with it.*' In return, it was asked how there could be war between two nations when there had been no hostility, injury, insult, or provocation on either side. His Excellency replied 'That Turkey, Tripoli, Tunis, Algiers, and Morocco were the

sovereigns of the Mediterranean; and that no nation could navigate that sea without a treaty of peace with them.' *

"It was the delight of his soul, and the whole pleasure of his life to do good; and he was zealous to embrace an opportunity, which now presented itself, of doing a great deal. The time was critical, and the sooner peace was made the better; for, from what passed before he left home, he was convinced if the treaty should be delayed another year, it would, after that, be very difficult to make it. If any considerable number of vessels and prisoners should be taken, it would be hard to persuade the Turks, especially the Algerines, to desist. A war between Christian and Christian was mild, and prisoners, on either side, were treated with humanity; but a war between Turk and Christian was horrible, and prisoners were sold into slavery. Although he was himself a Mussulman, he must still say he thought it a very rigid law; but, as he could not alter it, he was desirous of preventing its operation, or, at least, of softening it, as far as his influence extended. . . . He 'called God to witness,' that is to say, he swore by his beard, which is a sacred oath with them, 'that his motive to this earnestness for peace, although it might be of some benefit to himself, was the desire of doing good.' . . .

"This man is either a consummate politician in art and address, or he is a benevolent and wise man. Time will discover whether he disguises an interested character, or is indeed the philosopher he pretends to be. If he is the latter, Providence seems to have opened to us an opportunity of conducting this thorny business to a happy conclusion." †

Adams and Jefferson found the terms too exorbitant. The ambassador demanded as the lowest price for a perpetual peace 30,000 guineas for his employers

* February 17, 1786, Life and Works of John Adams, viii., 372.

† John Adams' Works, viii., 373.

and £3,000 for himself; that Tunis would probably treat on the same terms; but he could not answer for Algiers or Morocco. Peace with all four powers would cost at least $1,000,000, and Congress had appropriated only $80,000.

That their minds were full of this subject may be seen from the constant references to it in their correspondence. At one time there was a rumor that Dr. Franklin had been captured on his way home, and taken to Algiers, and "that he bore his slavery to admiration." *

Mr. Adams was strongly opposed to war, on account of the expense, and preferred the payment of tribute.

"As long as France, England, Holland, the Emperor, etc., will submit to be tributary to these robbers, and even encourage them, to what purpose should we make war upon them? The resolution might be heroic, but would not be wise. The contest would be unequal. They can injure us very sensibly, but we cannot hurt them in the smallest degree. . . . If we could even send a force sufficient to burn a town, their unfeeling governors would only insult and deride, . . . and think no more of it than if we had killed so many caterpillars upon an apple-tree. . . . Unless it were possible, then, to persuade the great maritime powers of Europe to unite in the suppression of these piracies, it would be very imprudent for us to entertain any thoughts of contending with them, and will only lay a foundation, by irritating their

* Jefferson's Works, i., 449; Jefferson to Franklin, October 5, 1785.

passions and increasing their insolence and their demands, for long and severe repentance." *

Mr. Adams believed that war would be greatly more expensive than tribute,

"And when you leave off fighting, you must pay as much money as it would cost you now for peace. We ought not to fight them at all, unless we determine to fight them forever. The thought, I fear, is too rugged for our people to bear. To fight them at the expense of millions, and make peace, after all, by giving more money and larger presents than would now procure perpetual peace seems not to be economical." †

Mr. Jefferson quite as decidedly preferred war. He wrote to Mr. Adams:

"1. Justice is in favor of this opinion. 2. Honor favors it. 3. It will procure us respect in Europe; and respect is a safeguard to interest. 4. It will arm the federal head with the safest of all the instruments of coercion over its delinquent members. 5. I think it least expensive. 6. Equally effectual." ‡

He thought, too, that America would not have to fight alone, but would be joined by Naples and Portugal, if not by other powers.

"You will probably find the tribute to all these powers make such a proportion of the federal taxes as that every man will feel them sensibly when he pays those taxes. The ques-

* Adams to Jay, December 15, 1784, Adams' Works, viii., 218.

† Adams to Jefferson, June 6 and July 3, 1786; July 31, 1786, Adams' Works, viii., 400, 406, 411.

‡ Jefferson to Adams, July 11, 1786, Jefferson's Works, i., 591.

tion is, whether their peace or war will be cheapest? But it is a question which should be addressed to our honor as well as our avarice. Nor does it respect us as to these pirates only, but as to the nations of Europe. If we wish our commerce to be free and uninsulted, we must let these nations see that we have an energy which at present they disbelieve. The low opinion they entertain of our powers cannot fail to involve us soon in a naval war." *

Similar remarks are found in other letters. Jefferson fortified himself with the opinion of Count d'Estaing as to the means to be employed. He thought a perpetual blockade the best. The experience of Massiac had shown this to be effectual. "Bombardments," said d'Estaing, "are but transitory. It is, if I may so express myself, like breaking glass windows with guineas." †

"I was very unwilling," says Jefferson, in his *Autobiography*, "that we should acquiesce in the European humiliation of paying a tribute to those lawless pirates, and endeavored to form an association of the powers subject to habitual depredations from them. I accordingly prepared, and proposed to their ministers at Paris, for consultation with their governments, articles of a special confederation. . . . Spain had just concluded a treaty with Algiers, at the expense of three millions of dollars, and did not like to relinquish the benefit of that until the other party should fail in their observance of it. Portugal, Naples, the Two Sicilies, Venice, Malta, Denmark, and Sweden, were favorably disposed to such an association; but their representatives at Paris expressed apprehensions

* Jefferson to John Page, August 20, 1785, Jefferson's Works, i., 401.
† Count d'Estaing to Jefferson, May 17, 1784, conf. State Papers, x., 54.

that France would interfere, and, either openly or secretly, support the Barbary powers; and they required that I should ascertain the dispositions of the Count de Vergennes on the subject. I had therefore taken occasion to inform him of what we were proposing, and, therefore, did not think it proper to insinuate any doubt of the fair conduct of his government; but stating our propositions, I mentioned the apprehensions entertained by us, that England would interfere in behalf of those piratical governments. 'She dares not do it,' said he. I pressed it no further. The other agents were satisfied with this indication of his sentiments, and nothing was now wanting to bring it into direct and formal consideration but the assent of our Government, and their authority to make a formal proposition. I communicated to them the favorable prospect of protecting our commerce from the Barbary depredations, and for such a continuance of time, as, by an exclusion of them from the sea, to change their habits and characters from a predatory to an agricultural people; toward which, however, it was expected they would contribute a frigate and its expenses, to be in constant cruise. But they were in no condition to make any such engagement. Their recommendatory powers for obtaining contributions were so openly neglected by the several states, that they declined an engagement which they were conscious they could not fulfil with punctuality; and so it fell through." *

Every other method having failed, Barclay proceeded to Morocco, and Lamb to Algiers.

Barclay concluded a treaty with the Emperor of Morocco on July 16, 1787, without particular difficulty. This was, I believe, the first treaty made with any power in which neither tribute nor presents were

* Jefferson's Works, i., 65–67.

stipulated; although without a naval force it was naturally impossible to secure its accurate observance except by occasional presents. The treaty was concluded for fifty years. Soon afterward the Emperor died, and it was necessary to have it recognized by his successor. Twenty thousand dollars were appropriated for this purpose, which were distributed in presents, and in 1795 a formal ratification of the treaty was made. In 1802 there were some slight difficulties, and the consul was ordered to leave Tangier because the United States had not sent presents and had refused a convoy to some Moorish vessels. When the consul informed the Emperor that the President had ordered a hundred gun-carriages to be made and sent to him as a present, he was allowed to remain. In 1803 a Moorish corsair captured the American brig Celia, but this was soon recaptured by the frigate Philadelphia, and the act was disavowed by the Moorish authorities. When hostile demonstrations were threatened in consequence of this breach of the treaty, the Emperor proclaimed that "the American nation are still, as they were, in peace and friendship with our person, exalted of God." At the expiration of the forty-ninth year the treaty of 1787 was renewed for another fifty years. Our only other treaty with Morocco was a convention, into which, with most of the European powers, we entered in 1865, for the maintaining of a

lighthouse off Cape Spartel, for which the sum of $325 is now paid annually.

Lamb, however, entirely failed in his negotiations at Algiers. He had been sent thither by Jefferson and Adams, with many misgivings; but he had brought recommendations from Congress, had "followed for many years the Barbary trade, and seemed intimately acquainted with those states." They did not feel sure either of his abilities or of his integrity; they sent a Mr. Randall with him as clerk to "attend to his proceedings," and give information if he saw anything going amiss. When afterward, under the pretext of ill health, Lamb declined to return either to Congress, to Mr. Adams or to Mr. Jefferson, they feared some malversation. "I am persuaded that an angel sent on this business," says Mr. Jefferson, "and so much limited in his terms, could have done nothing. But should Congress propose to try the line of negotiation again, I think they will perceive that Lamb is not a proper agent."* Richard O'Brien, one of the captured sea-captains, wrote to Mr. Carmichael, our chargé d'affaires at Madrid, on June 24, 1790,

"That Mr. Lamb could speak nothing but English; that the French consul and Conde d'Espilly, the Spanish ambassador, would not take the trouble to explain Mr. Lamb's propositions, as the terms of the peace would be advantageous to the Alge-

* Jefferson's Works, i., 438, 605.

rines; and that the French and Spaniards advised Mr. Lamb to return to America, that the Algerines would not make peace with the United States of America." *

Subsequently the Vekil Hadji said to Mr. O'Brien that

"He hoped, if the Americans sent an American to Algiers to make the peace, they would send a man who could speak the Spanish or Italian language. He ridiculed much the sending a man that no one could understand what he had to say." †

About O'Brien himself, John Quincy Adams wrote, thirty years later:

"O'Brien is an old Irishman, who was once consul-general at Algiers, chiefly because he had been nine or ten years a slave there. He was a master of a vessel, and is an exact copy of Smollett's novel sailors. His discourse is patched up entirely of sea phrases, and he prides himself upon nothing so much as his language." ‡

The Dey, however, received Mr. Lamb and his secretary, Mr Randall, politely, and even informed them that he was well acquainted with the exploits of General Washington, for whom he felt great admiration; but as he never expected to see him, he hoped that Congress would do him the favor to send him a full-length portrait, that he might hang it up in his palace. The feeling of regard for General Washington did not, however, diminish the prices of the captives, which, according to Mr. Lamb, were $6,000

* 1 Foreign Relations, folio ed., 117. † Ibid.
‡ J. Q. Adams, Memoirs, iv., 403.

each for three captains, $4,000 for the mates and passengers, and $1,400 for each of the seamen, besides a customary duty of eleven per cent. on the whole amount. This made about $2,800 a captive, while the agents had authority to offer only $200. The last captives redeemed by the French had cost $300 a man, which, with the expenses, had amounted to about $500.

There existed at this time a religious order in Paris called properly the Society of the Holy Trinity for the Redemption of Captives—more commonly Mathurins from the church of St. Mathurin at Paris, which belonged to them—or Brothers of the Redemption. They were instituted in 1199 by two religious men for ransoming Christians captured by the infidels. Recourse was now had to this charitable order by Mr. Jefferson, and the general of the Mathurins gladly gave his services. But he required that the utmost secrecy should be observed; for if it were known that they were buying the slaves of other nations the price of their own countrymen would be raised. He required, also, that the allowances for the support of the captives, larger than those given by other nations, which it was believed came from public sources, should be stopped, as no Americans had ever been captured before. It was best to impress upon the Dey that they were supported solely by charity; and it was important to keep the price low, even should

they remain longer in imprisonment, lest the Algerines should pursue the Americans with greater eagerness and future captives have to pay a higher price. In 1789 a sum of money was deposited with the Mathurins, and the general immediately began bargaining. But, unfortunately, the price of captives had not much fallen. In July, 1790, only one had been ransomed, while six had died. The Revolution then put a stop to the proceedings of the Mathurins, by the abolition of all religious orders. As there was no question of obtaining their liberation by force, for the sake of saving a few thousand dollars, fourteen men were allowed to remain in imprisonment for ten years.

In 1792, on the proposition of General Washington, the Senate agreed to conclude a treaty with Algiers, provided that it should not cost more than $40,000, as a ransom for the thirteen Americans—$25,000 as a present to the Dey on its signature, and $25,000 more annually. The negotiations were entrusted to Admiral Paul Jones, and were considered so confidential and secret that all the papers were made out in Mr. Jefferson's own handwriting. There seems to have been a suspicion that there might be some opposition at Algiers on the part of other powers, for it was known that a Mr. Simpson, of Gibraltar, by the direction of the Messrs. Bulkley of Lisbon, had offered a contract to the Dey to redeem all the American captives for

$34,792. It was not known who the parties to this contract were; it was, indeed, never carried out, and Jones was instructed to deny all knowledge of it.*

Jones unfortunately died at this time, and Barclay, who succeeded him, also died in Lisbon. There was therefore some delay before Colonel David Humphreys, the American minister at Lisbon, was appointed plenipotentiary. Eight hundred thousand dollars were placed at his disposal. Humphreys never went directly to Algiers; but while in the south of Spain, endeavoring to get across to the Barbary coast, received the unwelcome, but not entirely unlooked for, news that the Portuguese had made a twelvemonth's truce with Algiers. The Portuguese squadron, therefore, which had guarded the Straits of Gibraltar, was withdrawn, and that allowed the Algerine fleet to get out into the Atlantic. The immediate result of this was that in a single cruise ten of our vessels were captured, and in November, 1793, the number of prisoners at Algiers amounted to one hundred and fifteen men, among whom there remained only ten of the original captives of 1785.

The Portuguese Minister of Foreign Affairs assured Mr. Church, our consul at Lisbon, that the truce

"Was as unexpected to the court of Portugal as it could be to us, and if it was not quite so unwelcome, yet it was by no

* Conf. State Papers, x., 261–8.

means agreeable to their court, who never intended to conclude either a peace or truce with the Dey, without giving timely notice to all their friends, that they might avoid the dangers to which they might otherwise be exposed by trusting to the protection of the Portuguese ships of war stationed in the Mediterranean."

Portugal had indeed expressed to England and Spain a desire for their co-operation in obtaining a lasting peace, and the English consul at Algiers had therefore, not only without authority, but without even consulting the Portuguese government, concluded this truce in behalf of Portugal. England guaranteed that Portugal should pay a tribute equal to one-third of that paid by Spain, although the Portuguese had refused to pay one farthing.

"The conduct of the British in this business leaves no room to doubt or mistake their object, which was evidently aimed at us, and proves that this envy, jealousy, and hatred will never be appeased, and that they will leave nothing unattempted to effect our ruin. As a further confirmation it is worthy of remark that the same British agent obtained a truce at the same time between the states of Holland and the Dey, for six months, whereby we and the Hanse towns are now left the only prey to those barbarians." *

On Mr. Church's representations the Portuguese arranged to give our merchant vessels the convoy of their ships of war whenever practicable. There were

*Church to the Secretary of State, October 12, 1793, conf. State Papers, x., 279.

then sixteen American and thirty Hanseatic vessels in the port of Lisbon.

Mr. Thomas Pinckney, the American minister at London, had a conversation on this subject with Lord Grenville, who assured him that England

"Had not the least intention or thought of injuring us; that they conceived they had done no more than their friendship for a good ally required of them; but that the measure was also particularly advantageous to themselves, as they wanted the co-operation of the Portuguese fleet to act against their common enemy, which it was at liberty to do when no longer employed in blocking up the Algerine fleet."

He assured him that no opposition would be made to the Portuguese convoy to vessels already in their harbors.*

Meanwhile the captives were sending home petitions to Congress begging that something should be done for them; and Captain O'Brien, in a remarkable letter to the President, considered that the only effectual means that could be employed were a fleet of thirty ships.† Colonel Humphreys wrote:

"If we mean to have a commerce, we must have a naval force, to a certain extent, to defend it. Besides, the very semblance of this would tend more toward enabling us to maintain our neutrality in the actual critical state of our affairs in Europe than all the declarations, reasonings, concessions, and sacrifices that can possibly be made."‡

* Conf. State Papers, x., 305.
† Ibid., 325. ‡ Ibid., 328.

Congress began at last to see affairs from the same point of view, and on January 2, 1794, the House of Representatives resolved that a "naval force adequate for the protection of the commerce of the United States against the Algerine forces ought to be provided." In the same year authority was given to build six frigates, and to procure ten smaller vessels to be equipped as galleys.

Negotiations, however, continued to go on. Pierre Eric Skjöldebrand, the brother of the Swedish consul at Algiers, having become interested in the fate of the Americans, gave some advice and offered his assistance to our Government. He wrote that the European jealousies at Algiers were so great that it was difficult for any nation to obtain a peace; and that the Dey wars averse to making peace at any price,

"Because," said he, "if I were to make peace with everybody, what should I do with my corsairs? What should I do with my soldiers? They would take off my head for the want of other prizes, not being able to live upon their miserable allowance."

But Skjöldebrand thought that by the payment of a sufficient amount of money in ways which he specified, together with an annual tribute and occasional presents, peace might be obtained.*

In March, 1795, Joseph Donaldson, who had been appointed consul at Tunis and Tripoli, was associated

* Conf. State Papers, x., 314.

in the negotiations with Humphreys, to whom Joel Barlow, the poet of the "Columbiad," was afterward added, and they were authorized to employ the services of Skjöldebrand. Much seems to have depended on the manner in which the negotiation was carried on, and stress was laid upon the fact that the Americans had previously employed the Jewish house of Bassara & Co., all whose efforts had been countermined by their commercial rivals, Bacri & Co., who were the confidential agents of the Dey. By transferring the business from Bassara to Bacri, and by liberal promises, the Swedes had got the matters into such train that Donaldson, who arrived in Algiers only on the 3d of September, was able to conclude a treaty on the 5th, the very day on which Barlow arrived.*

In making this treaty, however, we had been obliged to follow the usage of European powers—not only pay a large sum for the purpose of obtaining peace, but an annual tribute, in order to keep our vessels from being captured in the future. The total cost of fulfilling the treaty was estimated at $992,463.25. That included $642,500 paid at Algiers to the Dey and to his officials and his brokers, a frigate

* Ibid., 449. See also the Report of the Secretary of the Treasury, of January 4, 1797, ibid., 453. The treaty is published in the Official Collection of Treaties of the United States.

of thirty-six guns, built and furnished in the United States, and the naval stores and tribute of the first year. We were bound to pay besides this sum about $21,600 a year in naval stores; $20,000 on the presentation of a consul; biennial presents to the officers of the government, estimated at $17,000, as well as incidental and continual presents on the promotion of the principal officers of the Dey and regency, and for the attainment of any important object. Of these last no estimate could be made.

The United States fell behind in their payments, and in 1798 sent four armed vessels to the Dey as arrearages. William Eaton, who had been appointed consul to Tunis, accompanied this fleet, and thus describes his presentation to the Dey:

"We proceeded from the American house to the courtyard of the palace, uncovered our heads, entered the area of the hall, ascended a winding maze of five flights of stairs to a narrow, dark entry, leading to a contracted apartment of about twelve by eight feet, the private audience-room. Here we took off our shoes, and entering the cave (for so it seemed), with small apertures of light with iron grates, we were shown to a huge, shaggy beast, sitting on his rump upon a low bench, covered with a cushion of embroidered velvet, with his hind legs gathered up like a tailor or a bear. On our approach to him he reached out his fore paw as if to receive something to eat. Our guide exclaimed, 'Kiss the Dey's hand!' The consul-general bowed very elegantly and kissed it, and we followed his example in succession. The animal seemed at that moment to be in a harmless mode; he grinned several

times, but made very little noise. Having performed this ceremony, and standing a few moments in silent agony, we had leave to take our shoes and other property, and leave the den, without any other injury than the humility of being obliged, in this involuntary manner, to violate the second command of God and offend common decency." *

A treaty was made by Barlow with Tripoli in November, 1796, on similar terms to that made with Algiers; indeed, the Dey of Algiers advanced to the United States the money necessary to obtain the peace; and the treaty was made under his guarantee. By the tenth article the money and presents given to the Dey were to be considered full payment, and no pretence of any periodical tribute for further payment was ever to be made by either party. This clause naturally did not hold good. The Tripolitans became dissatisfied with the more advantageous terms which had been obtained by the Algerines; and even had a dispute been referred to the Dey of Algiers, as had been stipulated for, it could not be expected that he would decide in our favor. The eleventh article is curious. It reads:

"As the Government of the United States is not in any sense founded on the Christian religion; as it has in itself no character of enmity against the laws, religion, and tranquillity of Mussulmans; and as the said States have never entered into any war or act of hostility against any Mohammedan nation, it is declared by the party that no pretext arising from relig-

* Life of William Eaton, by C. C. Felton, 182.

ious opinions shall ever produce an interruption of the harmony existing between the two countries."

For the negotiations with Tunis, Barlow had employed a French trader by the name of Famin, who in 1797 succeeded in concluding a treaty with the Bey. But it contained some articles to which great objection was made by our Government. One of these, the fourteenth, the Senate refused to ratify. It had provided that Americans sending goods to Tunis, in American vessels, should pay three per cent. duty, while those sent by foreigners, on board American ships, should pay ten per cent. duty; and that all Tunisians sending goods to the United States, under any flag whatever, should pay only three per cent. duty. Famin appeared to be something of a rascal, and it was thought that this article, which Barlow said was not in the original document, was inserted that he himself might reap the profits of any direct trade between Tunis and the United States. Two other articles were also objected to; one that a barrel of gunpowder should be given the Tunisian government for every gun fired in saluting an American ship of war; and the other that the government of Tunis might compel an American captain to put his vessel at their service at such freight as the government chose to prescribe. Mr. William Eaton, who had served in the army, was sent out as consul to Tunis at the same time with Mr. Cathcart, who was going

in the same capacity to Tripoli. He was authorized to procure a revision of the articles to which objection had been made. Strangely enough, the greatest difficulty he found was with regard to the rates of duties. The Bey of Tunis objected to putting the United States on the footing of the most favored nation, as he would never be able to find out, on account of the distance, what the various duties imposed in America were. So long as the terms were fixed, whether one, ten, or a hundred per cent., he would agree to it. Besides this, however, he insisted on the barrel of gunpowder for each gun fired in a salute.

"'However trifling it may appear to you,' the Bey said, 'to me it is important. Fifteen barrels of gunpowder will furnish a cruiser which may capture a prize and net me $100,000.' We told him the concession was so degrading that our nation would not yield to it—both justice and honor forbade—and we did not doubt the world would view the demand as they did the concession. 'You consult your honor,' said he; 'I, my interest; but if you wish to save your honor in this instance, give me fifty barrels of powder annually, and I will agree to the alteration.'"

There was also a difficulty about presents. The Bey demanded certain articles of jewelry which could only be procured in London at a great price. When Eaton offered him even $50,000, in place of the jewelry, he refused, on the ground that he was accustomed to presents, but did not know their value, and had

plenty of cash. Finally the treaty was arranged nearly on our terms; but it cost us $107,000.*

The whole cost of buying freedom for our ships from the Barbary powers had amounted, in 1802, exclusive of sundry expenses incurred but not yet paid, to over two million dollars;† enough, if we may take the cost of the frigate sent to Algiers as an example, to have built and equipped twenty large frigates. Half of this, if spent on naval appropriations in the beginning, would have saved us the tribute of many years; for it would have procured peace with all these powers without payment or ransom.

Indeed, until we sent a naval force into the Mediterranean the treaties did us little good. In less than three years after the signature of the peace of Tripoli the consul was ordered to leave, and war was declared. The Bashaw was offended at not being as well paid as Algiers; and yet under the second year of the treaty he had received $12,000, and in the third $22,000, although nothing had been stipulated. He demanded as a condition of sparing the United States the immediate payment of $225,000, and $25,000 annually—the Swedes, with whom the United States

* For a full account of the interesting negotiations of Eaton with Tunis, one should consult the Life of William Eaton, by the late Professor C. C. Felton, published in the ninth volume of Sparks' Library of American Biography.

† Foreign Relations, folio ed., ii. 369.

seemed to have been put on an equality in all these wars, having agreed to these terms. Eaton wrote:

"If our Government yield these terms to the Bashaw of Tripoli, it will be absolutely necessary to make provision for a requisition of double the amount for the Bey of Tunis. Algiers will also be respected according to rank. If the United States will have a free commerce in this sea, they must defend it. There is no alternative. The restless spirit of these marauders cannot be restrained."

A small squadron of American vessels was sent to the Mediterranean and blockaded Tripoli in such a way that no attack was made on our trade until the Dey of Algiers and the Bey of Tunis showed signs of hostility, when the blockade was raised in order that the ships might act as convoys to merchant vessels. The war gradually became more active, and gave occasion for the display of great gallantry on the part of our naval officers. The frigate Philadelphia, which had unfortunately grounded on rocks at the entrance of the harbor of Tripoli, was captured and all its officers and crew made prisoners. The Philadelphia was most gallantly destroyed a few months later by a detachment under the command of Decatur, then only a lieutenant. There were other small actions in which our officers showed distinguished bravery; but the most romantic incident of the war was the overland march through four hundred miles of desert, from Alexandria to Derna, of Eaton, in company with the

ex-Bashaw Hamet, who had been dethroned by his brother, and whose cause, owing to Eaton's representations, our Government had taken up. Derna was occupied, the troops of the Bashaw were defeated, and we might have obtained a peace with Tripoli on our own terms, as well as have reinstated Hamet, according to our agreement with him, had not Colonel Tobias Lear,* consul-general at Algiers, under discretionary powers which had been granted to him, hastily made a treaty by which we gained none of the principles at stake, and simply bought a peace by the payment of $60,000 ransom for the American captives in Tripoli. To our great disgrace Hamet was abandoned. Colonel Lear had put an article into the treaty that his family should be restored to him; but by a secret article, which was never officially communicated to the United States Government, and was not known by them until some time later, instead of being obliged to restore the family at once, the Bashaw was given four years for that purpose. It may have been very unwise for us to have made the original agreement with Hamet to restore him to his throne; but certainly we showed bad policy and bad faith in not keeping our agreement.

We already had difficulties with Algiers. In October, 1800, the Dey informed the consul that he in-

* Colonel Lear had been private secretary to General Washington.

tended to send an ambassador to the Porte, at Constantinople, with the usual presents, and for that purpose he should choose the small American frigate George Washington, which happened to be at that time in the harbor of Algiers. At that time we had never had any relations with the Turks, nor had we any treaty with any of the Italian states who were at war with Algiers. The captain was, of course, without orders on the subject. To the objections of the consul the Dey threatened war, plunder, and captivity unless the vessel should go. More than this, it was necessary to hoist the Algerine flag at the maintop of the frigate. It was found impossible to refuse. Not only was the Algerine flag raised, but it was saluted with seven guns, a compliment which ultimately cost the United States $40,000. The only satisfaction was, that after arriving at her destination the George Washington was the first of our ships to raise the American flag in the Bosphorus.

Grievances were easily made out by the Dey. The naval stores, he claimed, had not come up to the quality desired, and had been short in amount; and, more than that, as the reckoning of the tribute was by Mohammedan years and not by the Christian calendar, we were found deficient to the amount of $27,000 in the year 1812. The consul was ordered to leave the country, but not before he had paid this amount of money, which he was obliged to borrow at a heavy

interest. At that time we had already paid in tributes to Algiers the sum of $378,363. The Dey had not chosen his time well, owing to the war with Great Britain. Very few of our ships were in the Mediterranean, and he captured only one small brig with a crew of eleven persons. After the treaty of peace had been made with England, we declared war against Algiers, and a naval force was sent out. Before our ships arrived at Algiers, they had already captured an Algerine frigate and brig; and on their arrival they found that the whole Algerine corsair fleet was at sea. It was therefore very easy to intercept the ships as they returned to port. The next day after the arrival of the squadron, the Algerines proposed a treaty. The American negotiators, Commodore Decatur and Mr. William Shaler, who had been sent out as consul-general, replied with a draft of a treaty, and with a declaration that the United States would never pay tribute under any form whatever. The Dey asked for time to consider, but this was refused. He even pleaded for three hours. The reply was:

"Not a minute. If your squadron appears in sight before the treaty is actually signed by the Dey, and sent off with the American prisoners, ours will capture it."

An Algerine ship did come in sight, and every preparation was made for a fight; but within three hours, through the mediation of the Swedish consul,

the treaty had been signed by the Dey, and the American prisoners were delivered up, although the messenger, accompanied by the Swedish consul as mediator, had to row five miles to the shore and back in that time. No presents were given, and tribute and presents of any kind were henceforth abolished. It was agreed, also, that prisoners of war should not be made slaves. This was on June 30, 1815, just forty-one days after the squadron had left American waters.

On the same day Mr. Shaler landed as consul-general, and was received with due honor. All the American property which had been illegally seized in Algiers was restored, and $10,000 were paid as an equivalent for the captured brig Edwin and her cargo. Without inserting any stipulation to that effect in the treaty, Decatur agreed, as a mark of good-will, to restore the two Algerine vessels which had been captured.

"You told us," the Dey's minister sorrowfully said to the British consul, "that the Americans would be swept from the seas in six months by your navy, and now they make war upon us with some of your own vessels, which they have taken."

Both Tunis and Tripoli had shown a hostile disposition, and both in conformity with their treaties with England, but contrary to those made with us, had, during the war, allowed English ships to take possession of American prizes anchored in their har-

bors. Decatur therefore proceeded to Tunis and demanded an indemnity of $46,000 for two prizes taken by the privateer Abellino and seized in the port of Tunis by a British ship of war. "I know this admiral," said the Dey to our consul, Mr. Noah; "he is the same one who, in the war with Sidi Yusuf, of Tripoli, burnt the frigate." The Dey looked at the fleet, laid down his telescope, sank back in his cushions, combed his beard with a small tortoise-shell comb set with diamonds, reflected a minute, and ordered the money to be paid immediately.

At Tripoli it was much the same. The Bashaw at first threatened war, but when he learned what had happened at Algiers and Tunis, he paid $25,000, as indemnity for two prizes carried away by the English, and released ten Christian captives, two of them being Danish youths, and the remainder the family of a Sicilian gentleman.

Decatur, in reporting to the Secretary of the Navy, (August 31, 1815), says:

"Any attempt to conciliate them, except through their fears, I should expect to be vain. It is only by the display of naval power that this depredation can be restrained. I trust the successful result of our small expedition, so honorable to our country, will induce other nations to follow the example; in which case the Barbary States will be compelled to abandon their piratical system."

The speedy success of our expedition caused much talk, and early in 1816 the British government sent

out Lord Exmouth to the Barbary States with instructions to procure a peace for Naples and Sardinia on the same terms as those made with Spain and Portugal (for it was desired to strengthen these states as a barrier against France); to notify them that the Ionian Islands had been put under British protection, and that their commerce must be therefore respected, and especially with reference to our treaty just concluded with Algiers. Its eighteenth article, with regard to prizes in war, was held to be incompatible with the ninth and tenth articles of the treaty of 1698 between Great Britain and Algiers. While "it might not for this reason be necessary to require the abrogation of the treaty between the United States and Algiers," Lord Exmouth was "instructed formally to protest against the application of that article of the treaty to Great Britain in the case of any future hostilities between that country and the United States."*

The question of putting down the Barbary powers had been brought before the Congress of Vienna by Admiral Sir Sidney Smith, who advocated a league of European powers for the purpose of extirpating these pirates, and suggested as the best method that a permanent blockade be established along their coast. English policy seems to have prevented the Congress

* John Quincy Adams, Memoirs, iii., 356.

from taking any action on this subject, and there was a division of opinion as to what course should be pursued; whether, so long as English commerce was made safe, these piratical states should be preserved in order to prey upon the commerce of other nations; and what the interests of England demanded. The *Edinburgh Review* said: *

"Indeed the common belief in the Mediterranean is that we rather encourage the piracy of these freebooters for the purpose of opposing the commerce of other nations, a most false charge undoubtedly in this extent; but so far founded in truth that we might by a word have put them down long ago, and that we have always, for one reason or another, abstained from exerting our lawful means of destroying them."

The *Quarterly Review*, which at that time, according to Mr. Adams, "was a mere ministerial pamphlet," in April, 1816, gave the Tory view of the question, and attempted to prove that because England had abolished negro slavery there was no reason that it should touch white slavery, which was not so bad. The slaves were well enough treated, and could always be ransomed by their friends and relations; and besides that, they were mostly Sardinians, Neapolitans, and Sicilians, whom apparently the writer thought beneath notice. The article maintained that England could not consistently with sound policy and good faith join in a league for putting down the Barbary pow-

* Vol. xxvi., 449.

ers. "As far as natural interests are concerned," it said, "it would be an act of madness;" that the cause of humanity would in no way be benefited—and, indeed, why should England be pirate-taker general? Or if she was to start in that course, she had better begin by putting down the pirates in the China seas, where her trade suffered, whereas she was abundantly able to secure the safety of her commerce in the Mediterranean.

Lord Sheffield had said in 1783, in his "Observations on the Commerce of the American States:"

"It is not probable that the American States will have a very free trade in the Mediterranean. It will not be for the interest of any of the great maritime powers to protect them from the Barbary States. If they know their own interests, they will not encourage the Americans to be carriers. That the Barbary States were advantageous to the maritime powers is certain. If they were suppressed, the little states of Italy would have much more of the carrying trade. . . . The armed neutrality would be as hurtful to the great maritime powers as the Barbary States are useful. The Americans cannot protect themselves from the latter; they cannot pretend to a navy."

And Smollett had said:

"All the powers that border on the Mediterranean, except France and Tuscany, are at perpetual war with the Moors of Barbary, and for that reason obliged to employ foreign ships for the transportation of their merchandise. This employment naturally devolves to those nations whose vessels are in no danger from the depredations of the Barbarians, namely,

the subjects of the maritime powers, who, for this puny advantage, not only tolerate the piratical states of Barbary, but even supply them with arms and ammunition, solicit their passes, and purchase their forbearance with annual presents, which are, in effect, equivalent to a tribute." *

In 1816 Chateaubriand proposed in the French House of Peers that the different courts of Europe should all unite in the endeavor to prevail upon the Barbary powers to abolish their practice of making slaves of Christians. Lord Castlereagh said of it to Mr. J. Q. Adams, "with a sneering smile, that he thought it was only a project of Sir Sidney Smith's which would not meet with much encouragement." †

The treaties made by Lord Exmouth provided that the Neapolitan government should pay to Algiers $24,000 yearly, with the usual biennial consular presents, and all the captives, one thousand in number, were ransomed at $1,000 per head. The arrangement with Sardinia was similar, but the forty captives were rated at only $500 each. The rulers of Tunis and Tripoli agreed entirely to abolish Christian slavery, and encouraged by this success Lord Exmouth returned to Algiers in order to procure the same concession from the Dey. But he was met by a point-blank refusal, and then by requests for delay, which was granted after the British consul had been arrested

* Smollett, History of Great Britain, George II., ch. vii.
† Memoirs, iii., 365.

and several naval officers insulted. Lord Exmouth sailed for home on May 21st. His action brought on a debate in the House of Commons, when Lord Brougham

"Reproved the terms on which the treaty had been made, and thought that if the country had sanctioned them with its authority, a great stain would be fixed on her character and consequences injurious to her reputation and honor could not fail to arrive." *

No sooner was Lord Exmouth's back turned than the Dey, to show his anger, ordered the arrest of all Italians under British protection at Oran and Bona. The latter were chiefly Neapolitans, engaged in the coral fishery, and while they were hearing mass on shore, on the morning of May 31st, one hundred were killed, one hundred wounded, and about eight hundred taken prisoners. The British vice-consul was arrested, but his life was saved through the friendship of the governor. The English acted at once, and Lord Exmouth was sent back in command of a squadron, assisted by five Dutch ships under the command of Admiral van der Capellen. The Dey refused the terms proposed to him. The British fleet then bombarded and burned Algiers, upon which the Dey came to his senses, and on the next day signed the treaty. By this all Christian slaves were given up—sixteen hundred and forty-two in number—and

* Hansard's Debates, June 18, 1816.

with those from Tunis and Tripoli, three thousand and three in all; $400,000 were paid back to Naples and Sardinia for the ransom money received that year, and an agreement was made to treat prisoners of war according to the usage of European nations.*

The punishment was sufficient for the time; but the next Dey, Ali Khoja, kidnapped the daughters of European residents for his harem, sent plague ships about the Mediterranean to spread the pest, and behaved in such a way that the Congress of Aix-la-Chapelle in 1818 resolved to repress his practices, and commissioned England and France to act for Europe. A combined English and French squadron arrived off Algiers in September 1819, but the new Dey refused to submit, and after a blockade the fleet retired. It was not until the insult offered to the French consul in 1827 that decisive action was taken, terminating in the French conquest in 1829, when the Dey was allowed to retire to Italy.

To return to our own affairs. The day after Lord Exmouth made his first treaties with Algiers, the Dey, under pretext of the difficulties with his two ships, which had been delivered by Decatur at Cartagena, and had been detained by the Spanish authori-

* For the history of these events, during which the American consul-general, William Shaler, appears to have acted very well, see The Scourge of Christendom, by Lieutenant-Colonel R. L. Playfair.

ties, declared his treaty of 1815 with us to be no longer binding. He sent away our consul, and wrote a letter concerning his action to

"His Majesty the Emperor of America, its adjacent and dependent provinces, coasts, and wherever his government may extend; our noble friend, the support of the kings of the nation of Jesus, the pillar of all Christian sovereigns, the most glorious amongst the princes, elected amongst many lords and nobles; the happy, the great, the amiable James Madison, Emperor of America—may his reign be happy and glorious, and his life long and prosperous."

President Madison, in his reply of August, 1816, said:

"The United States, whilst they wish for war with no nation, will buy peace of none. It is a principle incorporated into the settled policy of America, that as peace is better than war, war is better than tribute."

After the bombardment of Algiers by the British, and the opportune arrival of another American squadron under Commodore Chauncey, no further difficulty was made about carrying out the treaty, and it was renewed in December, 1816. By some accident this treaty was overlooked in the State Department, and it was not ratified until France, Sardinia, and Holland made similar treaties with Algiers; but Naples, Sweden, Denmark, and Portugal continued for some years to pay a tribute of $24,000 annually.

In spite of the many hesitations of our policy it

will be seen that the United States was first to obtain from the Barbary powers the abolition of presents and the proper treatment of its prisoners of war. Incidentally these difficulties with Barbary gave us a navy. But the cost of the diplomatic negotiations must have equalled that of the naval operations. The expenditures for intercourse with the Barbary powers paid out by the State Department, apart from salaries, amounted in 1821 to $2,650,709.* Even after the tribute had ceased, the regular annual appropriations under this head, down to 1841, were $42,000, then $30,000, and finally $17,400; but for some part of this time this was only another name for the secret service fund.

* Senate Ex. Doc., No. 38, 44th Congress, 2d Session, pp. 44, 54, 55.

V.

THE RIGHT OF SEARCH AND THE SLAVE-TRADE.

Negro Slavery.—Prohibition of the Slave-trade.—English Feeling and English Interests.—The Right of Search.—English Treaties.—The Police of the Seas.—Treaty of Ghent.—Lord Castlereagh's Propositions.—Mr. Adams' Reply.—The Slave-trade Piracy.—Rush's Treaty.—Canning's Objections to the Amendments.—Mr. Adams' Explanation.—Attempt to Execute Treaties by a British Statute.—The British Claim to Search American Vessels.—Lord Aberdeen.—Tyler's Message.—The Quintuple Treaty.—General Cass.—Lord Brougham.—The Ashburton Treaty.—Cass and Webster.—Opinions of Publicists.—Brazil.—Renewed Vigor.—General Cass and Lord Napier.—British Outrages in 1858.—Debate in Parliament.—The English Claim Withdrawn.—Mr. Seward's Treaty of 1862.—Additional Treaty of 1870.

It would be unfair to charge England exclusively with the introduction of slavery into America. Negro slaves were imported into the Dutch colony of New Amsterdam even before it had been occupied by the English. Nevertheless, this traffic was fostered by England; and even where the colonies had passed acts tending to diminish the slave-trade, the as-

sent to them had been refused by the King.* Further back, in the time of Charles II., owing to domestic troubles, the emigration from England had taken such proportions that the introduction of slaves into the colonies was looked upon as a means of preventing it; and the King by a proclamation called upon his subjects to subscribe in order to form a new company for the continuation of the trade. At the peace of Utrecht, in 1713, the English considered themselves repaid for many of the sacrifices to which they had submitted during the war of the Spanish Succession, by obtaining an article known as the *Pacto del Assiento de Negros*, by which Great Britain and the South Sea Company obtained the exclusive right to introduce slaves into the Spanish provinces of America, to the number of 4,800 yearly, for thirty successive years.

In spite of the fact that negro slavery existed in nearly all the colonies, the Declaration of Independence had no sooner been signed than measures were taken to prohibit the slave-trade; and at the formation of the Constitution, in 1787, an article was inserted prohibiting entirely the importation of slaves

* The chief authorities for this chapter are Enquiry into the Validity of the British Claim to a Right of Visitation and Search of American Vessels suspected to be engaged in the African Slave-trade, by Henry Wheaton, originally published in 1841; Wheaton's History of International Law; and Visitation and Search by William Beach Lawrence, 1858. All quotations from speeches and documents have been verified.

after January 1, 1808. In 1794 a law was passed forbidding the slave-trade to Americans under severe penalties.

Owing to the efforts of the partisans of abolition in England, the question of suppressing the slave-trade, and even of slavery itself, had been before the public for many years; but it was not until 1807 that Parliament succeeded in passing a law abolishing the slave-trade, and even then there seemed to be great danger that it would be vetoed by the King, who opposed any sort of innovation. Denmark indeed had, by a law passed in 1792, abolished the slave-trade and the importation of slaves into its colonies, beginning with the year 1804. With this exception, and even this was only for the date at which the law was to take effect, the United States were the first to prohibit the kidnapping and trapping in human beings.

Wrong as we all believe the slave-trade to be, we are now in a position, since slavery has been, through military force, entirely abolished in the United States, to consider the subject more calmly and without prejudice.

All nations are subject to sudden gusts of philanthropy, and none more so than the English. But while we may admit that it was entirely owing to the efforts of philanthropic men that the slave-trade and slavery were abolished by England, it is difficult to believe that the active and long-continued policy, for

nearly fifty years, of putting down the slave-trade by all means within its power was entirely owing to philanthropic motives. It was soon found that, as slaves could no longer be introduced into the British colonies, while the traffic that formerly went to them was diverted to the neighboring colonies, the British colonies suffered through want of hands, and foreign trade flourished. The cost of the production of sugar, for instance, which had much influence on the question, was greater in the British West Indies than in the Spanish colonies. British interests, quite apart from any question of philanthropy, demanded, as far as possible, the *entire* suppression of the slave-trade. Although the real reason was fairly well concealed under the mask of philanthropy, it occasionally shows itself very plainly. For instance, in a debate in the House of Commons, on June 15, 1810, on a motion of Mr. Brougham with regard to the suppression of the African slave-trade, Mr. Marryatt, who was an eminent West Indian merchant and at the same time colonial agent for Trinidad, said:

"We ought to adopt not a nominal but an effectual abolition of this abominable traffic. He alluded more particularly to the Spanish slave-traders, who carried on a traffic enormous in its extent, and in its effects ruinous to the British colonies. In truth, as some had formerly predicted, the slave-trade was not destroyed; it had only changed hands. *Trinidad no longer obtained the negroes so necessary for its cultivation.* But the same number of negroes were exported from Africa,

only they went to the Spanish colonies *instead of our own.* He appealed to the British Parliament on the part of our own planters, and trusted that effectual steps would yet be taken for remedying so serious an evil."

Not only was it proposed to abolish the slave-trade to other countries, but even when this was found difficult, to prohibit the importation of products raised by slave labor, especially of sugar. As to cotton, there was not yet a question. But sugar was raised in British colonies, and it cost more than sugar raised by slave labor. A writer in the *Quarterly Review* * lays stress on the fact that the Brazilians and Spaniards, not the Africans, reaped the benefit of British emancipation until slavery should be abolished in their countries. He speaks of the depopulation of more than one-half of the British West Indian settlements, the destruction of more than one-half of British West Indian commerce, the displacement of the sugar cultivation of the colonies of other nations, and the transfer of the Cuban trade from Great Britain to the United States. And then, after arguing in behalf of the British sugar planters, in an outburst of philanthropic zeal, says:

"If on any pretext whatever, political or commercial, whether to help her revenue or cheapen her purchases, Great Britain admits into her own market a single ton of sugar raised by a slave-importing colony, she is a direct receiver in the felony, with more than a felon's guilt."

* Vol. lv., p. 250.

The English cabinet saw that it would be necessary in the general pacification to restore the French and other colonies that had been taken possession of during the war, and therefore pressed the more earnestly at the Congress of Vienna for general measures for the abolition of the slave-trade, on account of the incidental protection thereby accorded to British trade. The Congress did in general terms stigmatize the slave-trade, but left the measures for its abolition to the care of each individual nation.

During the war the English had been able to suppress in great measure this traffic by the belligerent right of search. Knowing that this right could not exist in time of peace, England endeavored to make treaties with various countries in order to permit it, for the purpose of suppressing the slave-trade. Before the year 1820 such treaties were made with Denmark, Spain, Portugal, and the Netherlands; although for the treaty with Portugal England agreed to pay the sum of £300,000, under the pretext of indemnities for slave-ships captured in war; and to Spain the sum of £400,000 was given outright. It is hardly to be supposed that, with the burdens then weighing on the English exchequer, these large sums would have been given unless an equivalent of some kind was expected. More than that, England only gained the cessation of the slave-trade by Spain and Portugal in regions north of the equator. The reason

was very simple. It was to prevent the domains of other powers obtaining cheap labor, and thus competing with the British West India Islands.

So far one of the main reasons for the continued action of England against the slave-trade was the protection of British commerce. But British statesmen soon began to see that, through the right of visitation and search which had been accorded by the treaties with the several powers, it might be easy, under pretext of putting down the slave-trade, to obtain the police of the sea, which once having been granted and made the rule of international law, it would be difficult to take away from them; and this would secure the preponderance of the British navy.

The treaty of Ghent, which put an end to our maritime war with England, simply restored the state of things before the war, without deciding any of the questions of maritime rights that were involved. The English negotiators, however, considered this a good occasion on which to procure our assent to their principles for the suppression of the slave-trade. An article (the tenth) was therefore introduced to the effect that

"Whereas the traffic in slaves is irreconcilable with the principles of humanity and justice; and whereas his Majesty and the United States are desirous of continuing their efforts to promote its entire abolition; it is hereby agreed that both the contracting powers shall use their best endeavors to accomplish so desirable an object."

This was the beginning of a negotiation that lasted fully fifty years, which, though nominally for the abolition of the slave-trade, turned almost entirely on the right of searching vessels during time of peace. Without following every detail of these negotiations, there are certain points that are of more than usual interest, and on these I shall touch.

Reference has been made to the treaty with Spain of 1817, by which, in consideration of the payment of £400,000, England obtained the abolition of the slave-trade south of the equator, its eventual total abolition, and a right of search, for the nominal purpose of putting it down. In a subsequent debate in Parliament, February 8, 1818, great satisfaction was expressed, and the right of search granted was considered a precedent of the greatest value. In order to make use as soon as possible of this precedent, Lord Castlereagh called a meeting of the foreign representatives then in London, and read to them a memoir, showing that since the general pacification of Europe, the slave-trade had increased. As the belligerent right of search had ceased since the war, it was necessary for the powers to make mutual concessions on this subject; for if even a single one refused to submit to the exercise of this right, the slave-trade might be carried on under the flag of that country. It was suggested, therefore, that the ministers of all the powers should make an arrangement by which

the vessels of war of their respective countries should have the right of visit for this purpose. As the ministers had no instructions they could only refer the affair to their governments. On subsequent negotiations the French government declined to enter into any such arrangement.

Lord Castlereagh also communicated to Mr. Rush, our minister at London, the text of the treaties concluded between England and Spain, and other European powers, and invited the United States to enter into a similar arrangement. Independently of this, Mr. Burrow, of Rhode Island, had introduced into the Senate the subject of concert with foreign nations to put down the slave-trade; and at the same session a more stringent act was passed by Congress against the traffic. Mr. John Quincy Adams, then Secretary of State, in replying to Lord Castlereagh, mentioned the law which had just been passed, but said that "the admission of a right for the officers of foreign ships of war to enter and search the vessels of the United States in time of peace, under any circumstances whatever, would meet with universal repugnance in the public opinion of the country." The two nations had mercantile navies of about the same tonnage, but the war navy of England was ten times greater than that of the United States. Our commerce would have been subjected to far more interruption than the commerce of England could possi-

bly have been. It was not so much the search for vessels fitted as slavers that we objected to, but a fear that other encroachments might be made under this pretext. For this fear there were the strongest reasons. One of the causes of the war of 1812, besides the violation of what were claimed as neutral rights, was the impressment of British seamen from American ships; and in the declaration of the Prince Regent he spoke of the right of impressing British seamen as one which came into operation while exercising the undoubted and undisputed right of searching neutral vessels for other purposes.

"If a similarity of language and manners may make the exercise of this right more liable to partial mistakes and occasional abuse when practised toward vessels of the United States, the same circumstances make it also a right with the exercise of which, in regard to such vessels, it is more difficult to dispense."

We had seen, too, the consequences of such searches. Two American vessels—the Amédée in 1807, and the Fortuna in 1811—had been condemned by the English Admiralty courts, not because they had infringed any law of nations or any rule of war, but because they were engaged in carrying on the slave-trade, which was forbidden by municipal law in Great Britain, and had not proved that they were engaged in a traffic which was lawful in the United States. Another vessel, the Diana, was restored to

its Swedish owners because Sweden had never forbidden the slave-trade. Much as we in this country abhorred the slave-trade, we were unwilling to have our laws carried out by English cruisers and English courts. It is true, that a subsequent decision of a contrary nature was rendered in the case of the Louis in 1817. Without referring to the previous decision, Lord Stowell decided that no British act of Parliament, if inconsistent with the law of nations, can effect the rights of foreigners; that the right of visitation and search on the high seas did not exist in time of peace; and that trading in slaves was not piracy nor a crime by the universal law of nations.

This principle, however, the British government attempted to introduce into international law by means of treaties. While negotiations were still going on in the United States, the meeting of sovereigns took place at Aix-la-Chapelle in November, 1818, and Mr. Clarkson, the advocate of abolition, was invited to accompany Lord Castlereagh and present a memoir on the subject. Lord Castlereagh, in supporting this memorial, proposed a general concession of the reciprocal right of search and the capture of vessels belonging to powers that had forbidden the slave-trade, but still continued it; and second, a solemn proscription of the slave-trade as piracy under international law. The great powers replied separately. France rejected the proposition and suggested a com-

mon police of the sea. Russia, Prussia, and Austria refused to denounce the slave-trade as piracy so long as Portugal or any other civilized state continued to allow it. They also rejected absolutely the right of search.

At the Congress of Verona, in 1822, another effort was made to incorporate this important principle in the law of nations; but all that Mr. Canning could obtain was a repetition of the general declarations made at Vienna and Aix-la-Chapelle.

Meanwhile the Congress of the United States had in 1819 passed another law, declaring that the importation of slaves should be punished by death; and by a law of May 15, 1820, declared the slave-trade to be piracy. It is evident that the word *piracy* here is to be taken in a different sense from the ordinary one. So far as the United States were concerned, it was municipal and not international piracy, and the term was used for the convenience of trial and punishment; *i.e.*, the slave-trade was assimilated piracy. But at the same time it is evident that Congress expected that the slave-trade would be declared piracy under international law by the common agreement of all nations, and that in this way any questions as to the right of search might be avoided; for pirates, being enemies of the human race, can be attacked anywhere and everywhere; and the search of vessels under suspicion of piracy would, if they were innocent, be fol-

lowed by proper apology and compensation. Public opinion was so strongly exercised on the subject of the slave-trade that resolutions on the subject passed the House of Representatives in 1821, 1822, and 1823, by which the President was requested to enter into arrangements with other powers for the abolition of the slave-trade; and in 1823, when the vote was nearly unanimous, a clause was added, proposing its denunciation as piracy under the law of nations. We were even willing to overlook our objections to the right of search; though a clause proposing a direct assent to it was rejected.

Already in the English Parliament of July 9, 1819, an address had been presented to the Prince Regent congratulating him on his efforts to suppress the slave-trade, speaking in very complimentary terms about the United States, and urging a continuation of negotiations, especially with France and America. Efforts to obtain the right of search from the United States were therefore renewed, and on December 20, 1820, Sir Stratford Canning, the British minister, presented a note to Mr. Adams on the subject. Negotiations continued between Mr. Adams and the British minister, without result, until the resolution of 1823, just mentioned, when the conduct of negotiations was transferred to Mr. Rush at London; and he finally, on March 13, 1824, signed a treaty with England denouncing the slave-trade as piracy by the

laws of the two countries, and agreeing to exercise their influence with other maritime nations to have it denounced as piracy according to international law, but stipulating also for the reciprocal exercise of the right of search, under certain restrictions, by vessels duly authorized by the instruction of their respective governments to cruise on the coasts of Africa, America, and the West Indies, for the suppression of the slave-trade. Vessels captured were to be tried by the courts of the country to which they belonged, and not by those of the captor, as had been proposed by England.

When this treaty was submitted to the Senate for approval various amendments were made. The Senate refused to submit to the search of American vessels on the coast of America, as also to try as pirates Americans found on the vessels of any third power; and another article was also proposed allowing the treaty to be denounced after six months' notice. These amendments the English government refused to accept. Mr. Canning was especially indignant with the omission of the word *America*, saying that he should have never signed the treaty unless the right of search had been granted for the coasts of America as well as for those of Africa and the West Indies. Mr. Canning also took ground which a little reflection would have shown him to be wrong, that any amendment by the Senate was objectionable.

The treaty, therefore, was not finally ratified, and all negotiations were suspended for some time.

Mr. Adams said afterward in Congress, about this very subject : *

"I returned home and held the situation of Secretary of State under the administration of Mr. Monroe, and was the medium through which the proposal of the British government was afterward made. I resisted and opposed it in the cabinet with all my power, and though not a slave-holder myself, I had to resist the slave-holding members of the cabinet, as well as Mr. Monroe himself, for they were all inclined to concede the right. I maintained my ground as long as I could, for there was at that time a strong inclination in Congress also to assent to the proposal. Not a session passed but there was a proposition to request the President to negotiate for the concession of this right of search. . . . Mercer continued to press it until, finally, in 1822, he brought the House by yeas and nays to vote their assent to it; and, strange to say, there were but nine votes against it. The same thing took place in the other House; the joint resolution went to the President, and he, accordingly, entered into the negotiation. It was utterly against my judgment and wishes; but I was obliged to submit, and I prepared the requisite despatches to Mr. Rush, when he made his proposal to Mr. Canning. Mr. Canning's reply was, 'Draw up your convention, and I will sign it.' Mr. Rush did so; and Mr. Canning, without the slightest alteration whatever, without varying the dot of an *i*, or the crossing of a *t*, did affix to it his signature; thus assenting to our own terms in our own language.

"But as to the right of search, in the bitterness of my soul

* Mr. John Quincy Adams, April 14, 1842, Congressional Globe, 27th Congress, 2d Session, p. 424.

I say it was conceded by all the authorities of this nation. I say this because I am not now for conceding it."

In 1831–33 Great Britain obtained from France a concession of the right of search under certain limitations, and gained also the adhesion to these treaties of Denmark and Sardinia in 1834; of the Hanse towns and Tuscany in 1837; of Naples in 1838; and of Hayti in 1839. In this last year (1839) the English government complained that the Portuguese had never executed the stipulations of their treaty, and still continued the slave-trade. Apparently despairing of obtaining the principles for which they contended by general assent, and feeling strong by the co-operation they had thus far obtained, they undertook to enforce them by an act of Parliament, and a law was passed to execute the provisions of the treaty with Portugal by means of English vessels. By this law any Portuguese vessels engaged in the slave-trade, or any vessel that could not establish to the satisfaction of the court that she was justly entitled to claim the protection of the flag of any state or nation, could be condemned by a British admiralty court. The Duke of Wellington, who had opposed all such proceedings, and had maintained that if Portugal had violated any treaty, redress was to be obtained by negotiations, asked,

"Was it intended that the vessels of any power in Europe might be searched and afterward allowed to proceed on their voyage, whether we had treaties with those powers or not?"

Lord Melbourne replied that

"The bill did not bind her Majesty to adopt those measures; that it was for her Majesty to apportion her measures to meet the necessities of the case."

Even on the third reading of the bill the Duke of Wellington protested against its passage, and made special reference to the United States, as nothing went to show the least disposition on the part of America to permit the right of detention and search for papers. He said that the measure still exhibited its criminal character; it was a breach of the law of nations and a violation of international treaties. Shortly after the bill had passed Parliament, the Republic of Hayti attempted to put into effect a similar law for capturing slave-traders off the Haytian coast, and bringing them into its ports for adjudication. Lord Palmerston declared this entirely unauthorized and impossible to allow, as no state had the right, without special treaties, to visit, search, or detain vessels belonging to any other power, even though they were actually engaged in the slave-trade. Yet, at almost the same time, this claim was brought forward by Lord Palmerston against the United States, and in a note dated August 27, 1841, to Mr. Stevenson, our minister, he explicitly claimed a right, which he avowed the intention of his government to continue to exercise, that British cruisers could examine our vessels with a view of ascertaining by inspection of

papers their nationality; and claimed that the United States flag could only exempt a vessel from search when that vessel was provided with papers entitling her to wear that flag, and proving her to be United States' property, and navigated according to law. Mr. Stevenson showed that the English claims were incompatible with the law of nations, as expounded in their own country. Lord Aberdeen, who had succeeded Lord Palmerston, in his reply of October, 1841, intimated that Lord Stowell's decisions were no longer of authority; and that the change of circumstances, by the happy concurrence of the states of Christendom in a good object, not merely justifies, but renders indispensable, the right now claimed and exercised by the British government. He observed that the vessels were not visited as American vessels, but only as being suspected of belonging to some nation with which England had treaties, and fraudulently carrying American colors. This view is a distinction too fine for practice, for, as Mr. Wheaton justly observes,

"Neither is the neutral vessel visited in time of war, *as neutral;* but she is ever visited, and captured, and detained, and carried in for adjudication, as being suspected to be an enemy, either literally such, or as having forfeited her neutral character by violating her neutral duties." *

In his subsequent correspondence with Mr. Everett, Lord Aberdeen endeavored to make another point,

* Enquiry, p. 143.

that the right of visit claimed by the English was not the same as the right of search practised toward neutral vessels in time of war. It was, however, plainly shown by international authorities, and even by English decisions, that what in French was termed *droit de visite* had been translated into English either "right of visit," or "right of search," and that there could be no distinction between a visit for the purpose of ascertaining the true character of a ship, and a visit with a search to ascertain whether it was strictly performing its neutral duties. As Mr. Lawrence says:

"If the proposition of the British government was tenable, we were in much worse position than if we had actually conceded the right of search. In the treaties made with other powers, there were limits as to the time when and where the visitation for the examination of papers may be made; and the right of detention is confined to certain cruisers specially authorized. In our case, if admitted at all, it would be equally competent for any ship of war, and if English ships have the right, all others possess it, to visit and detain any merchant-man at any time and in any part of the ocean." *

President Tyler had already met the attempt to bind us by the acts of other states in his message of December 7, 1841, in which he declared that

"The United States cannot consent to interpolations into the maritime code at the mere will and pleasure of other governments. When we are given to understand, as in this in-

* Visitation and Search, p. 41.

stance, by a foreign government, that its treaties with other nations cannot be executed without the establishment and enforcement of new principles of maritime police, to be employed without our consent, we must employ language neither of equivocal import nor susceptible of misconstruction. Whether this Government should now enter into treaties containing mutual stipulations upon this subject is a question for its mature deliberation. Certain it is, that if the right to detain American ships on the high seas can be justified on the plea of a necessity for such detention arising out of the existence of treaties between other nations, the same plea may be extended and enlarged by the new stipulations of new treaties to which the United States may not be a party."

There seemed danger that the English pretensions would find strong support on the Continent, for on December 20, 1841, the very date of Lord Aberdeen's letter to Mr. Everett, England had persuaded Austria, Russia, Prussia, and France to sign a treaty by which these four powers agreed to adopt the English laws relating to the slave-trade, which was declared piracy, and all five mutually conceded to each other a qualified right of search. Such a treaty was of course a mere formality, for the Mediterranean was specially excluded, and no ships belonging to Austria, Russia, or Prussia had ever been engaged in the slave-trade or were ever captured by British vessels. Fortunately our minister in Paris at that time was General Lewis Cass, a man of great experience, of decided views, and who had succeeded in obtaining a very intimate and friendly footing with the French govern-

ment. He took the responsibility of acting without instructions, presented to M. Guizot a copy of the President's message and the correspondence on this subject with England, and called the attention of the French government to the grave consequences, not only to America but to France, which might result from a ratification of the treaty. In this action General Cass was supported by some of the most eminent statesmen of France. His letter was laid before the King and Council; both MM. Guizot and Thiers had full conversations with him on the subject, and the result was that France refused to ratify the quintuple treaty.

General Cass' action was warmly approved by our Government, but it was as heartily disliked by the English government; and Lord Brougham, who had been very prominent in all these disputes, took occasion, in a debate a year afterward, on the subject of the Ashburton treaty, to revile General Cass in terms which, fortunately, nowadays no English member of Parliament would use in speaking of an official of even the smallest state.*

* Said Lord Brougham, on April 7, 1843: "There was one man who was the very impersonation of mob hostility to England—General Cass—whose breach of duty to his own Government was so discreditable, and even more flagrant than his breach of duty to humanity as a man, and as the free descendant of English parents, and whose conduct in all these particulars it was impossible to pass over or palliate. This person,

Immediately—for the quintuple treaty had failed of its main object in not being ratified by France, through General Cass' interference—Lord Ashburton was sent to the United States to negotiate a treaty settling several important questions in dispute between the two governments. The treaty was made and ratified. The question of visitation and search was apparently never mentioned during the negotiations. Instead of this our Government bound itself to keep a squadron carrying not less than eighty guns on the African coast, in connection with the British squadron, but

who had been sent to maintain peace, and to reside at Paris for that purpose, after pacific relations had been established between France and America, did his best to break it, whether by the circulation of statements upon the question of international law, of which he had no more conception than of the languages that were spoken in the moon, or by any other arguments of reason, for which he had no more capacity than he had for understanding legal points and differences. . . . For that purpose he was not above pandering to the worst mob feeling."

General Cass replied, in the Senate, only on February 10, 1846:

"Lord Brougham did not always talk thus—not when one of his friends applied to me in Paris to remove certain unfavorable impressions made in a *high quarter* by one of those imprudent and impulsive remarks, which seem to belong to his moral habits. The effort was successful. And now my account of good for evil with Lord Brougham is balanced.

"It is an irksome task to cull expressions like these and repeat them here. I hold them up not as a warning—that is not needed—but to repel the intimation that we ought to study the courtesies of our position in the British Parliament."

independently thereof. When General Cass was asked to communicate this treaty to the French government, he complied with his instructions, but resigned, on the ground that he had not been properly supported by his own Government in the question of the right of search, and in writing to Mr. Webster he took occasion to explain his objections to the treaty on the ground that no article had been inserted especially refusing the right of search. He feared lest England might construe this omission into an admission by the United States of her claims. Mr. Webster replied, and a bitter correspondence ensued. What General Cass had said had been substantially said in the debates in the Senate on the ratification of the treaty, and events soon proved General Cass in the right and Mr. Webster in the wrong.* President Tyler, in his message of August 11, 1842, communicating the treaty to the Senate, sustained the provision for the African squadron on the ground that this was a substitute for visitation and search; and in his next annual message said that the ground assumed in the former message had been maintained, and all pretence removed from interference with our commerce for any purpose whatever by any foreign government. As

* The correspondence between General Cass and Mr. Webster will be found partly in Webster's Works, and the remainder in the Life of Cass. The Letters and Times of the Tylers also contain some interesting statements and letters on this subject.

soon as these statements reached England, the British government showed their view on the subject. Sir Robert Peel, then Prime Minister, said:

"With respect to the treaty lately signed between this country and the United States, I say, that in acting upon that treaty we have not abandoned our claim to the right of visitation, nor do we understand that in signing that treaty the United States could suppose that the claim was abandoned."

The British minister, Mr. Fox, was directed to read to the Secretary of State a despatch from Lord Aberdeen, in which it was stated that from the principles which she had constantly asserted, and which are recorded in the correspondence of 1841, England had not receded and would not recede. The matter was submitted to Congress, and subsequently Mr. Webster, in his instructions to Mr. Everett, dated March 28, 1843, reviewed the whole question with great ability, and ended by saying:

"The Government of the United States does not admit that by the law and practice of nations there is any such thing as a right of visit distinguished by well-known rules and definitions from a right of search."

It is to be regretted that the views of the Government were not put forward by Mr. Webster in this way at the time when they would have been peculiarly forcible, that is, during the negotiations for the treaty.

All the important writers on international law

agree with the position taken up by the United States. De Cussy says:

"The extension of the right of visitation and search in time of peace will be the commencement of a system for the dominion of the sea, by means of the abuses to which visitation and search would give rise, by confounding intentionally all the distinctions of times and circumstances, of peace and war, and all the rights applicable to the two different situations, the one regular and the other forced and temporary." *

In discussing particularly our own actions, he says:

"The United States manifested under these circumstances, in the highest degree, the sentiment of respect which every nation ought to feel for the independence of its flag and for its own dignity as a sovereign state. The other powers, carried away by the philanthropic sentiment which had induced them to sign the treaty of 1841, seemed to have forgotten that they were favoring the strongest passion of England—her dominion of the sea. Was it not to go beyond all her hopes to grant to her numerous ships of war a right of visitation and search in time of peace, in exchange for the same right received by the very inconsiderable navies of Russia, Austria, and Prussia, and of the other maritime states which had acceded to the treaty of 1841?" †

The action of Parliament in 1845 is a striking example of how far England was willing to go in this direction. The treaty of 1817 made with Portugal, by which Brazil, after becoming independent, had bound itself in 1826, expired by its own provisions in 1845; and this fact, and the termination of the mixed

* *Droit Maritime*, tom. ii., p. 385. † Ibid., p. 364.

commission under the treaty, had been duly notified to the English government by Brazil. Yet under the pretext that the treaty had provided that, three years after its ratification, the slave-trade in Brazil should be utterly abolished and treated as piracy, the British Parliament passed an act in August, 1845, giving jurisdiction to British admiralty courts over any vessel engaged in the slave-trade with Brazil. English cruisers even entered Brazilian harbors and rivers and burned, when they could not cut out, Brazilian ships.

By 1849 England had succeeded in making twenty-four treaties for the suppression of the slave-trade, ten of which established mixed courts, and all of which, except those of France and the United States, permitted a mutual right of search. During the Crimean War the British were unable to exercise the same vigilance on the coast of Africa, and the slave-trade greatly revived. After this, British cruisers were very active, not only on the African coast, but even in the Gulf of Mexico, and there were numerous complaints that American vessels, some of them entirely innocent, had been overhauled and searched by the British. Complaints in each case were presented to the English government, which explained that no stricter instructions had been given than those which had been for many years in force. The reasons for the greater vigor following these in-

structions were very simple—the amount of prize-money which every capture brought to the takers. The ship and its cargo were forfeited, and the proceeds divided among the officers and crew of the vessel which captured it. Unless in some rare case, even the slaves were not restored to their native country, but were held to service for sixteen years, on government account, in whatever colony the ship might be condemned, in order to pay the expenses of their rescue. Thus, from their great zeal in putting down piracy, the British cruisers began to commit, themselves, something very near piracy. It became quite common on the coast of Africa, whenever a vessel, supposed to be a slaver, showed American colors, for a British officer to board her and suggest to the captain that in case he were engaged in the slave-trade it might be more convenient for him personally—as the penalty for the slave-trade was death by the laws of the United States—to throw his papers overboard, and allow his vessel to be taken as without papers, by which it would be tried before a British court, and only the ship and cargo condemned, while the officers and crew would go free.

The French convention of 1845 with England, which was signed after a warm parliamentary discussion, to take the place of those of 1831 and 1833, was limited in duration to ten years, and the French refused to consent to its continuance beyond that point;

so that in 1857, the time at which we have now arrived, this was inoperaive, and France was allowed to take her own measures for punishing French slave-traders. Although the article of our treaty of 1842, providing for an American squadron on the coast of Africa, might have been abrogated after five years, it was not; and its execution was insisted on in a note from Lord Napier to General Cass, then Secretary of State, as late as December 24, 1857, and this, too, when the British commanders had done all they could to render our squadron useless, by persuading American captains found delinquent to throw overboard their American papers and surrender to British ships. In Lord Napier's note was a remark referring to the hoisting of the American flag:

"This precaution does not prevent the slaver from visit, but it exonerates him from search."

It was undoubtedly agreeable to General Cass that, after the action he had taken when minister to France in 1842, he could now be the means of effectually preventing all further British claims in this respect. In his reply of April 10, 1858, he said:

"The distinction taken between the right of visitation and the right of search, between an entry for the purpose of examining into the national character of a vessel and an entry for examining into the objects of her voyage, cannot be justly maintained upon any recognized principles of the law of nations. The United States deny the right to the cruisers of any power

whatever to enter their vessels by force in time of peace, much less can they permit foreign officers to examine their papers and adjudicate upon their nationality, and whether they are navigated according to law. No change of name can change the legal character of the assumption. Search or visit, it is equally an assault upon the independence of nations." *

In May, 1858, General Cass was, on two occasions, obliged to bring the subject of boarding American vessels by British officers to the attention of the British government; and in transmitting a list of American vessels which had been boarded he called particular attention to the search of one in the harbor of Sagua la Grande in Cuba.

On the 24th of May the Committee on Foreign Relations in the Senate made a report about the outrages recently committed on American vessels, and on the 15th of June resolutions were adopted unanimously on the subject, protesting against these acts and approving of the action of the Executive in sending a naval force into the infested seas, with orders to protect all vessels of the United States on the high seas from search or detention by the vessels of war of any other nation. The strongest anti-slavery men, such as Mr. Seward, Mr. Hale, and Mr. Wilson, were as firm and vigorous in their expressions as any slave-holder from the South.

This looked very much like war, and in the debates

* 35th Congress, 1st Session, Senate Ex. Doc., No. 49, p. 49.

in Parliament on June 17th and 18th it appeared that the British government, after taking the advice of its law officers, had determined to give up all claim to any right of visitation, even without the substitution of any convention in its place. Lord Napier was indeed instructed to state to General Cass that the British government entirely agreed with his statement of doctrine on the subject. There still being, however, some question on the subject in the newspapers, and even apparently a little quibbling in Parliament, Mr. Dallas, the American minister at London, in a speech made on July 4th at a banquetof Americans, announced to his countrymen that

"Visit and search, in regard to American vessels on the high seas in time of peace, is finally ended."

Mr. Dallas, in a letter to General Cass, says:

"The slight doubt hinted in some newspapers as to the question of the renunciation of the boarding question and the reticence of the ministerial grandees when interrogated, seemed to make it important that the exact character of what has been done should be fixed before Parliament adjourns, and before the possible contingency of a change from Derby to Palmerston can take place. The post-prandial device worked to a charm, and Lords Lyndhurst and Malmesbury have left nothing to desire in their public and precise avowals."*

In the House of Lords, on July 26th, Lord Lyndhurst asked for the correspondence with the United

*Mr. Dallas to Mr. Cass, July 30, 1858, Dallas' Letters from London, p. 39.

States on this question. He spoke of Mr. Dallas' speech, saying that some persons in high positions had considered the proceeding not justified, and that a most important and valuable right had been sacrificed.

"We have surrendered," he said, "no right at all, for no such right as that contended for has ever existed. We have abandoned the assumption of a right, and in doing so we have acted justly, prudently, and wisely. I think it is of great importance that this question should be distinctly and finally understood and settled. By no writer on international law has this right ever been asserted. There is no decision of any court of justice, having jurisdiction to decide such questions, in which that right has ever been admitted."

Here it might be supposed that this long-continued dispute had ended; but four years afterward, in 1862 (April 7), Mr. Seward accepted the proposition of the English government for a more stringent treaty on the subject of putting down the slave-trade, and accepted the mutual right of search for that purpose. We were then engaged in putting down the rebellion. Mr. Seward probably supposed that in accepting this proposition he would conciliate England to our side of the dispute; at the same time Mr. Seward was no doubt influenced by his feelings against slavery. Such was certainly the case with Mr. Sumner, whose speech in the Senate, when the treaty was presented for approval, is one of the few authentic records of that event.

There had, indeed, just before the war, been an outbreak of the slave-trade. Up to that time slavers had generally been fitted out in English ports, but in 1859 and 1860 the headquarters of the business was in New York. There had been an acrimonious debate on the subject in Congress, though a law proposing additional penalties had been defeated, and on February 21, 1862, Nathaniel Gordon, the commander of the slave-ship Erie, was executed at New York. This was the only case in which the punishment of death had been applied in this country.

This treaty provided also for mixed courts, and, when the law for carrying the treaty into effect came up in the Senate, one or two senators opposed it on the ground that the treaty, for this reason, never should have been made; but nothing was especially said about the right of search. The treaty was a useless concession to Great Britain, for it did not purchase the benevolent neutrality of that government. Not a single case was ever tried in any of the mixed courts, for the slave-trade had died out; and in 1869 Congress asked the President to obtain the consent of Great Britain to the abolition of these courts. An additional treaty was made in 1870, by which the jurisdiction of the mixed courts was transferred to the admiralty courts of the contracting parties, British vessels to be judged in British courts, and American vessels in American courts at New York or Key West.

VI.

THE FREE NAVIGATION OF RIVERS AND SEAS.

A.—THE MISSISSIPPI.

Mr. Jay's Negotiations in Spain in 1780.—Our Claim.—Gardoqui in America.—Different Views of the Northern and Southern States about the Importance of the Mississippi.—Carmichael and Short at Madrid.—Objections to them.—Thomas Pinckney sent to Madrid.—Treaty of 1795.—Godoy's Opinion.—Spanish Protest against our Treaty with Great Britain.—Incident of 1802.—Final Settlement by the Acquisition of Louisiana and the Floridas.

THE efforts of our Government to secure for the commerce of its citizens the free navigation of rivers and seas have been constant, systematic, and remarkable, beginning even before we had obtained our independence. There had been difficulties between the Catholic provinces of the Netherlands and Holland with regard to the navigation of the Scheldt in the latter part of the eighteenth century; but the United States were the first to insist, as a matter of international law, that the people who live along the upper

waters of a river have a natural right to sail to the sea through the dominions of other powers. The rights claimed by the United States were laid down as part of the public law of Europe by the Congress of Vienna, but the credit of having first proclaimed them belongs to the United States alone.

As early as December 30, 1776, Congress passed a resolution for the purpose of making a treaty with Spain, agreeing that if Spain should join them in the war against Great Britain they would assist in reducing to the possession of Spain the town and harbor of Pensacola, then held by England, provided the inhabitants of the United States should have the free navigation of the Mississippi and the use of the harbor of Pensacola. Mr. Arthur Lee visited Spain at the request of Franklin and Deane, but he had no special appointment, and appears to have had no other object than to obtain money and supplies. The first regular minister of the United States to Spain was Mr. John Jay, who was appointed in 1779 to negotiate a treaty, and was instructed to guarantee the two Floridas on condition that the free navigation of the Mississippi should be obtained for this country.*

* This whole subject has been excellently treated by Mr. Theodore Lyman, in his book the Diplomacy of the United States, and by Mr. W. H. Trescot in his two volumes the Diplomacy of the Revolution and the Diplomatic History of the United States during the Administration of Washington

The great obstacle to the recognition of Mr. Jay on the part of Spain was the navigation of the Mississippi. The Spanish government desired to make the Gulf of Mexico a closed sea from Florida to Yucatan, into which the ships of other nations could not penetrate, the whole commerce being reserved for Spaniards. The Count Florida Blanca, on September 23, 1780, said with warmth,

"That unless Spain could exclude all nations from the Gulf of Mexico, they might as well admit all; that the King would never relinquish that object; that the ministry regarded it as the principal thing to be obtained by the war; and that obtained he should be easy whether Spain obtained other cessions or not. The acquisition was much more important than that of Gibraltar."

Mr. Jay remained in Madrid until May, 1782, but he was never received in his official character, for Spain had not yet formally acknowledged the independence of the United States, nor could he negotiate continuously with regard to the proposed treaty. Although he upheld in the strongest manner the claims of the United States to the navigation of the Mississippi, and even to having a free port accessible to merchant ships below the thirty-third degree of north latitude, or about that, for, on account of the

and Jefferson. Mr. John Bach McMaster, in his History of the American People has shown the popular feeling called out by the negotiation. I can add nothing new.

peculiarities of the Mississippi and the necessity of changing goods into sea-going vessels, the simple right of navigation would be of no use; yet he seems always to have considered it doubtful whether the United States would not be compelled to relinquish their claim to the Mississippi in order to obtain the recognition of their independence. The question was complicated by our desire to obtain pecuniary assistance from Spain for the purpose of carrying on the war, and on September 3, 1780, Jay said to Gardoqui, who had proposed the navigation of the Mississippi as a consideration for aids,

"That the Americans, almost to a man, believed that God Almighty had made that river a highway for the people of the upper country to go to the sea by; that this country was extensive and fertile; that the General, many officers, and others of distinction and influence in America were deeply interested in it; that it would rapidly settle," etc.*

It seems strange that, in a negotiation of this kind, Mr. Jay should have allowed himself to refer to the private speculations of General Washington in western lands.†

After Jay's departure his secretary, Mr. Carmichael, was left as chargé d'affaires, and in 1785 the Spanish

* Mr. Jay to the President of Congress, November 6, 1780.

† For full information on this subject, see a monograph by Prof. Herbert B. Adams, on Maryland's Influence upon Land Cessions to the United States, published in the Johns Hopkins University Studies in History and Political Science.

government for the first time sent to this country, as chargé d'affaires, the same Don Diego Gardoqui. Mr. Jay, who was then Secretary of State, was authorized by Congress to treat with the Spanish representative, not only on the question of boundaries, but on that of the Mississippi. Our claim had, we thought, been made perfect by the treaty of 1783, by which Great Britain recognized our independence; for by that treaty Great Britain had fixed, as our western boundary, the Mississippi, from its source down to the thirty-first degree of north latitude, and the eighth article read,

"The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States."

Our claims, therefore, rested, first, on the law of nature and of nations; second, on the treaty of Paris of 1763, by which a right was secured to the subjects of Great Britain

"To navigate the Mississippi, in its whole breadth and length, from its source to the sea, and expressly that part which is between the island of New Orleans and the right bank of the river, as well as the passage both in and out of its mouth; and that the vessel should not be stopped, visited, or subjected to the payment of any duty whatsoever."

The cession by France to Spain of the island of New Orleans, and of the country west of the Mississippi, was, of course, subject to our right of navigation

previously granted to us by France. Third, by the treaty with Great Britain of 1782–83, by which, as the owners of all the country east of the Mississippi and north of the thirty-first degree of latitude, we had come into all the rights formerly possessed by Great Britain with regard to that part of the river, including the right of free navigation to the mouth.

Spain objected to this transfer of rights on the part of England, pleading that the English had ceded what they did not own. Our negotiations were attended with very great difficulties owing to the division of opinion between the States, a fact of which Gardoqui became very easily informed. We were negotiating not only for the freedom of the Mississippi, but also for a commercial treaty. The Northern States, on account of their commerce, cared most for the commercial treaty, and were willing, in case we could conclude one with Spain on reciprocal terms, to forbear the use of the Mississippi from the southern boundary of the United States to the ocean for twenty-five or thirty years, thinking that the navigation of that river was of so little importance at that time that it would not become valuable for many years, and that it was no sacrifice to forbear the use of a thing which we really did not want. To this the five Southern States—Maryland, Virginia, the Carolinas, and Georgia were opposed. Many of their citizens had gone into the western country, and the

river system was such that the navigation of the Mississippi appeared to them of prime importance. But at first the Southern States were in a minority, and in 1781, when Mr. Jay was still in Spain, he was empowered to propose, as the condition of a commercial treaty, that we would forbear the use of the Mississippi for thirty years.* The feeling of the country, however, soon changed. Immediately after the war there was a large emigration from the Atlantic States, which were oppressed with taxes and debts, and, as Mr. Lyman well says,

"While Congress was discussing the points of a treaty a nation was created there." †

The time was now approaching when the Federal Government was about to go into operation, and the Congress of the confederation, therefore, in September, 1788, passed a resolution declaring that

"The free navigation of the river Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such;"

but passed over the further negotiations to the new Federal Government. Nothing, however, was done until the latter part of the year 1791, when there

* Mr. Jay had already written to Carmichael from Cadiz on January 27, 1780: "Let it appear also from your representation that ages will be necessary to settle those extensive regions."

† Lyman's Diplomacy of the United States, i., p. 235.

came an intimation from Spain that she would be willing to treat at Madrid, on one of the subjects then unsettled, viz., the navigation of the Mississippi. This hint was of such importance that Mr. Carmichael, who had left Madrid shortly before, and Mr. Short, at that time chargé d'affaires at Paris, were appointed commissioners to treat with the Spanish government on this subject, as well as on the question of boundaries and for a commercial treaty. The instructions with regard to navigation were sufficiently explicit. It was made a *sine qua non* that our right be acknowledged of navigating the Mississippi, in its whole breadth and length, from the source to the sea, as established by the treaty of 1763; that neither the vessels, cargoes, nor persons on board be stopped, visited, or subjected to the payment of any duty whatsoever; or if a visit must be permitted, that it be under such restrictions as to produce the least possible inconvenience; but it should be altogether avoided as the parent of perpetual broils; that such conveniences be allowed us ashore as might render our right of navigation practicable, and under such regulations as might, *bona fide*, respect the preservation of peace and order alone, and might not have an object to embarrass our navigation, or raise a revenue on it. The commissioners were also instructed that no phrase should be admitted into the treaty which could express or imply that we took the navigation of

the Mississippi as a grant from Spain, although this might be waived rather than fail in concluding a treaty. They were told, also, that no proposition could be entertained for compensation in exchange for the navigation; and in case of any such proposition it was to be offset by a claim for damages to the commerce of the United States by duties and detentions at New Orleans during nine years.

One adverse circumstance in the negotiations was that Gardoqui was appointed as Spanish commissioner. He had been in the United States, engaged in previous negotiations, and had so much experience of the indecision and weakness of the confederation that he was unwilling to make any concessions, and was extremely dilatory in his management.

Another adverse circumstance was in the foreign relations of Spain. The power in that country had come into the hands of a young man, Godoy, who, hoping to save the life of Louis XVI., had interfered diplomatically in such a way that war was soon afterward declared against Spain by France. There was an inclination on the part of Spain to an English alliance, and our commissioners feared lest, by pressing too greatly our claims, England, with whom our relations were at that time very unfriendly, might unite with Spain in opposing us. They therefore recommended to our Government to postpone negotiations for a while. Their instructions, however, were so

precise that they felt it necessary to act upon them; and, although they were successful in settling certain questions in regard to the Indians, they made no progress in the main objects of their mission. The commission was soon afterward dissolved by the departure of Mr. Carmichael; and Mr. Short, who was left chargé d'affaires, seems to have become personally disagreeable to the Spanish government.

Spain was unsuccessful in its war with France, and in July, 1795, Godoy succeeded in making a peace with the Republic, at Bâle, for which he was given the title of "Prince of the Peace." Indeed, it was through Mr. Monroe, our minister at Paris, that the first advances from Spain to France were made; and in order to secure Mr. Monroe's good offices in the matter, Godoy assured him that the settlement of the difficulties with the United States would be made at the same time and on the most favorable terms. When the first advances of Spain were made through Mr. Monroe, she also applied directly to the United States, and in August, 1794, Mr. Jaudenes, the Spanish commissioner, wrote to the Secretary of State, expressing

"His great regret at the little progress made in the negotiations between the two countries, owing to the fact that his Majesty would not treat so long as the plenipotentiaries were not furnished with the amplest powers, or were directed by their secret instructions to conclude a partial and not a general

treaty; at least his Majesty expected that the ministers appointed by the United States should be persons of such character, distinction, and temper as would become a residence near his royal person, and were required by the gravity of the questions under negotiation; . . . that the well-known misconceptions of Mr. Carmichael, and the want of circumspection in the conduct of Mr. Short, rendered it impossible to conclude this negotiation with them."

There ensued a long conversation between Mr. Randolph and Mr. Jaudenes as to what the objections and difficulties really had been, and especially as to what Messrs. Carmichael and Short had done which rendered them obnoxious to the Spanish government.*

After receiving the explanation from the Spanish representative, and ascertaining that, if a proper person were sent to Spain, the business stood a fair chance of being settled quickly, the President, in November, 1794, appointed Thomas Pinckney, then minister at London, as minister plenipotentiary at Madrid, with full powers to conclude a treaty. Before Mr. Pinck-

* Mr. John Adams writes in his diary, under the date of April 21, 1778, that Carmichael was a native of Maryland, of Scotch extraction, and that he was in England or Scotland when the Revolution began. "He had talents and education, but was considered by the soundest men who knew him as too much of an adventurer. What was his moral character, and what his conduct in Spain I shall leave to Mr. Jay; but he was represented to me as having contributed much to the animosities and exasperation among the Americans at Paris and Passy."

ney reached Madrid the Spanish commissioner sent to Mr. Randolph the points which would probably form the basis of negotiations. One of these was the navigation of the Mississippi. On Mr. Pinckney's arrival in Madrid, about the middle of June, 1795, he found a great inclination to delay; and finally, after negotiations had begun, there were differences on three points: 1, The Spanish government refused entirely to treat on the subject of commerce; 2, they demanded a division of the claims against Spain; and 3, while they admitted that the navigation of the Mississippi should be free to both nations, they objected to a depot for the commerce of the United States being established at New Orleans, and insisted that the right of navigation should be restricted solely to the subjects of Spain and to the citizens of the United States.

When he found that these differences were insuperable, Mr. Pinckney demanded his passports on October 24th. This brought Godoy to terms, and so fast did negotiations proceed that on October 17, 1795, the treaty was signed. By its fourth article his Catholic Majesty

"Agreed that the navigation of the Mississippi, in its whole breadth from its source to the ocean, should be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention."

And by Article 22 citizens of the United States were allowed

"For the space of three years to deposit their merchandise and effects in the port of New Orleans, and to export them from thence without paying any other price than for the hire of the stores; and his Majesty promises either to continue this permission, if he finds during that time that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them on another part of the banks of the Mississippi an equivalent establishment."

So far as the Mississippi was concerned this treaty was all that the United States could desire. Godoy himself says of it afterward in his "Memoirs:"

"This was, moreover, a formal act of navigation, independently of carefully providing for the common interests of both nations, that realized the first application of modern ideas respecting the equality of maritime rights and the measures which humanity enjoins in order to lessen the evils of war—ideas hitherto recorded in books and proclaimed by the civilization of the age, but the practical application of which has at all times been opposed by England."

Nevertheless the execution of this treaty was attended by numerous obstacles. It was a long time before the boundary lines were finally arranged, and it was fully three years before the Spanish troops were withdrawn from the territory of the United States. Delays were demanded both for Natchez and the Walnut Hills. In May, 1797, the Spanish government, through their minister at Washington, addressed

a formal protest and remonstrance against the various provisions in our own treaty with Great Britain signed in 1794. Some of the Spanish objections were to the principle of free ships, free goods, and to the designation of contraband articles; but there was especial protest against the rights given to Great Britain on the Mississippi. It had been stipulated in an explanatory article of the treaty of 1794, signed at Philadelphia on May 4, 1796, that no stipulations in any treaty subsequently concluded "can be understood to derogate in any manner from the rights of free intercourse and commerce secured by the third article of the treaty" of 1794. In this third article it had been stated that "the river Mississippi shall, according to the treaty of peace, be entirely open to both parties." Spain referred to the fourth article of the treaty of 1795, by which the right of free navigation of the Mississippi belonged solely to Spanish subjects and to citizens of the United States, and argued that by the treaty of 1763 Spain had ceded to England both banks of the Mississippi, which carried with it the free navigation of the river; that by the treaty of 1783 England had granted that right to the United States; but that, by a treaty of the same date made with Spain, England had restored to Spain both banks of the Mississippi without reserving the right of navigation. But, as this right had therefore passed away from England, she could not cede it to the United States.

Besides, even if by that treaty England had not been deprived of the right to use the navigation, the separation of the colonies had destroyed any right which the Americans might have formerly pleaded as English subjects. There was, therefore, but one source of derivation for the right of the United States—the special treaty with Spain—but that treaty had conferred the navigation exclusively upon the subjects of Spain and citizens of the United States, and therefore the United States had no power to grant this privilege to any one else. The answer of Mr. Pickering, the Secretary of State, was weak. He had to admit that if the right of the United States to the navigation of the Mississippi originated in their treaty with Spain of 1795, they certainly had no right to grant it to Great Britain in 1794. He therefore brought up extracts from Mr. Pinckney's notes in which reference to the rights of Great Britain had been made, and where Mr. Pinckney had contended that the words "alone and exclusively" submitted in the projects of Godoy should be omitted. But, unfortunately, the notes of the negotiation could not bear against the express stipulation. Another ground taken by Mr. Pickering was still weaker, that the stipulation as to navigation was not a joint stipulation, but sole on the part of the Spanish King, and that it concerned the United States no further than that it gave them the freedom of navigation. There was, however, not

much use in arguing the question, for it must have been understood that the United States would have been perfectly willing to accept any arrangement from Spain that practically opened the river, without too strictly scrutinizing its language, provided that the concession did not rest expressly on the grant from Spain.

"The objection to the supplementary article between Great Britain and the United States," as Mr. Trescot says, was "simply captious, for it could confer no possible right and in no way go a step beyond the original article in the treaty of 1783, by which the United States did nothing more than grant to Great Britain whatever right to navigation she might possess, neither the original nor the supplementary articles undertaking to express what those rights were."*

After all objections and difficulties seemed to be overcome, an event occurred which might have given rise to serious conflict. Morales, the Spanish intendant, on October 2, 1802, suspended the right of deposit at New Orleans, which had been enjoyed since the ratification of the treaty, and had been found by

* The commissioners who negotiated the treaty of peace wrote to Secretary Livingston, from Paris, on December 14, 1782: "As to the separate article, we beg to observe that it was our policy to render the navigation of the river Mississippi so important to Britain as that their views might correspond with ours on that subject. Their possessing the country on the river north of the line from the Lake of the Woods affords a foundation for their claiming such navigation."—John Adams: Life and Works, viii., p. 19.

the Americans of great use. The object of this decree was in order that the trade might fall into the hands of the Spaniards, now that a general pacification had been made in Europe; for while the war continued the Spaniards had not been able to carry on their trade. The action of Morales was disavowed by the Spanish government, but the difficulties were not entirely removed until the cession of Louisiana by France in 1803, when our rights were of course extended to the mouth of the river. By the subsequent cession of East and West Florida in 1819 the whole of the banks of the Mississippi, from the source to the mouth, became American; and as the stipulations for the rights of British subjects to the navigation of the river had not been mentioned in the treaty of Ghent of 1814, they lapsed; so that during the negotiations on the question of the St. Lawrence, ten or twelve years later, we refused to acknowledge any rights of England to the use of the Mississippi, it being all included within the United States, unless some branch should be discovered rising within the British dominions.

B.—THE ST. LAWRENCE.

Petition from New York.—Instructions to Mr. Rush.—Reply of Great Britain to our Claim of Free Navigation.—Mr. Clay's Arguments.—Mr. Gallatin's Opinions.—Suspension of Negotiations.—Treaty of 1854.—Treaty of 1871, Granting the Right Forever.

THE American claim to the free navigation of the St. Lawrence rested on the same basis of natural right as that to the use of the Mississippi, Great Britain being here substituted for Spain. The action of the congresses at Paris in 1814 and at Vienna in 1815, by which the navigation of the Rhine and its affluents, as well as of the Scheldt, had been thrown open to the whole world, were additional arguments for the United States, and showed how much the general feeling of the world, as to the use of navigable rivers, had advanced.

There had been no mention of the St. Lawrence in any of our treaties with Great Britain; but in 1823 the inhabitants of Franklin County, N. Y., presented a petition to Congress, asking for the right to be secured to them of sending their exports, chiefly lumber, through the St. Lawrence to the Atlantic. They had no difficulty in disposing of their products, whether lumber, pot and pearl ashes, salted provisions, or flour, in the markets of Montreal or Quebec, but

they could be sent no further. They were sold to English subjects who received the middleman's profits. This trade had gradually increased, and in 1821 the amount of a single article—lumber—transported down the St. Lawrence, amounted in value to $650,000, without bringing into the estimate the portion which found its way through Lake Champlain and the Sorel to Montreal and Quebec. This trade, so far as it dealt in the principal articles of flour and lumber, was almost entirely destroyed by an act of Parliament in August, 1822, which was in effect, though not in form, prohibitory.

Congress reported favorably on this petition, and in June, 1823, Mr. John Quincy Adams instructed Mr. Rush, our minister at London, to present our claim to the British government. Mr. Rush was then engaged in negotiations for obtaining various commercial rights, as well as for other subjects, and found occasion to present the matter to Great Britain, much apparently to the surprise of the British negotiators, who said that, on the principle of accommodation they were willing to treat with this claim of the United States in a spirit of entire amity; that is, as they explained, to treat it as a concession on the part of Great Britain, for which the United States must be prepared to offer a full equivalent. This was the only light in which they could entertain the question. As to the claim of right, they hoped that

it would not even be advanced. Persisted in, they were willing to persuade themselves it would never be. It was equally novel and extraordinary. They could not repress their strong feelings and surprise at its bare intimation. Great Britain possessed the absolute sovereignty over this river in all parts where both banks were of her territorial dominion. Her right, hence, to exclude a foreign nation from navigating it was not to be doubted, scarcely to be discussed. This was the manner in which it was first received. They opposed to the claim an immediate, positive, unqualified resistance.

"I said," said Mr. Rush, "that our claim was neither novel nor extraordinary. It was one that had been well considered by my Government, and was believed to be maintainable on the soundest principles of public law. The question had been familiar to the past discussions of the United States, as their state papers which were before the world would show. It had been asserted, and successfully asserted, in relation to another great river of the American continent flowing to the south—the Mississippi—at a time when both its lower banks were under the dominion of a foreign power. The essential principles that had governed in the one case were now applicable to the other." *

Mr. Rush thought it best to consign his arguments to a written paper, which was duly presented and en-

* The official correspondence is published in Congressional Documents, Session 1827–28, No. 43; see, also, Foreign Relations, folio, vi., 757-777.

tered upon the protocol of the eighteenth conference. At the twenty-fourth conference the British negotiators presented their reply, which had been drawn up by five of the most eminent publicists of the kingdom.

It is not worth while here to recapitulate the arguments employed by both governments, except to say that the United States rested their claim entirely upon natural rights, and the English their opposition thereto on the previous custom of nations. "The American Government," as Mr. Clay subsequently wrote to Mr. Gallatin, "has not contended, and does not mean to contend, for any principle, the benefit of which in analogous circumstances it would deny to Great Britain." Mr. Clay admitted that if it were found that a branch of the Columbia River rose in British territory, the British would have a right to navigate the Columbia to the sea; and so, if further exploration of the country should develop a connection between the Mississippi and Upper Canada. He said:

"It is not necessary to discuss all the extreme cases which may be fancifully presented, such as the foreign claim to passing the Isthmus of Darien, to drive a trade between Europe and distant India through two oceans, or that of passing through England to trade with France or other portions of the European continent. Examples of that kind belong to the species of sophistry which would subvert all principles by pushing their assumed consequences into the regions of extravagant supposition."

No answer was made at the time to the British paper consigned to the protocols of the conferences between Mr. Rush and the British negotiators, until Mr. Clay had become Secretary of State. Mr. Gallatin was sent as minister to England, and among the subjects to which his attention was especially directed was that of the navigation of the St. Lawrence. Mr. Clay, in a very interesting and able paper, resumed the whole case of the United States. He desired not only that the right to the free navigation of the St. Lawrence should be acknowledged as a right, but that the concession should be given of depots for American produce at Quebec, and possibly also at Montreal. In his instructions Mr. Clay made one very good point, saying:

"If the United States were disposed to exert within their jurisdiction a power over the St. Lawrence similar to that which is exercised by Great Britain, British subjects could be made to experience the same kind of inconvenience as that to which American citizens are now exposed. The best, and for descending navigation the only channel of the St. Lawrence, between Bernhard's Island and the American shore, is within our limits; and every British boat and raft, therefore, that descends the St. Lawrence comes within the exclusive jurisdiction of the United States. The trade of the upper province is consequently in our power."

Indeed, a report to the Legislature of the State of New York, in March, 1825, recommended an application to Congress to exercise this power in retaliation

for the British act of 1822 regulating the Canadian trade. This report said:

"The right to navigate the St. Lawrence can be of very little use to us unless we are allowed to trade at Montreal and our trade there is placed on a liberal footing."

Mr. Gallatin, in giving his opinion on his instructions, wrote to Mr. Clay from New York June 29, 1826:

"Generally speaking, two courses present themselves: 1, To insist on the right, and wait for a favorable opportunity to assert it, even at the risk of losing for the present the advantages which might be derived from a practical arrangement; 2, to waive for the present, without renouncing, the right, and to make a commercial arrangement which may remove or lessen the evils now complained of." *

Subsequently, in giving to President Adams an account of the state of negotiations, Mr. Gallatin wrote:

"St. Lawrence wholly impracticable to obtain, and inexpedient to offer any article founded avowedly or by implication on our right to navigate that river; none suggested for a temporary arrangement of the inland intercourse with Canada, implying only, but without doubt, reservation of the right." †

President Adams in reply wrote:

"One inch of ground yielded on the northwest coast, one step backward from the claim to the navigation of the St. Lawrence, one hair's-breadth of compromise upon the article

* Gallatin's Writings, ii., p. 313. † Ibid., p. 348.

of impressments, would be certain to meet the reprobation of the Senate. In this temper of the parties all we can hope to accomplish will be to adjourn controversies which we cannot adjust, and say to Britain, as the Abbé Bernis said to Cardinal Fleury, 'Monseigneur, j'attendrai.'" *

Gallatin was cautious in his negotiations, and wrote to Mr. Clay at the end of September, 1827:

"The determination not to open the colonial intercourse, and that not to negotiate on the river St. Lawrence without something like a disclaimer of the right, had been taken before my arrival, and on both points this government was immovable." †

Again, six weeks later, he wrote to the President:

"This might, in my opinion, be obtained at any time by renouncing the right. It is certain that it could not be secured at this time by any agreement which would not be tantamount to a renunciation." ‡

When Mr. Everett went to London as minister, Gallatin, who had already returned, wrote to him on this subject:

"The argument derived from natural law is strong. The precedents, that of the Scheldt excepted, are, I fear, against us. The most formidable objection is to be found in forty years' acquiescence, and in having accepted by the treaty of 1794 a part only, and very limited, of the navigation, unaccompanied by any assertion or reservation of the right. I have no doubt of the free use being ultimately allowed by Great Britain, not as a matter of right, but because it is clearly their

* Gallatin's Writings, ii. p. 368. † Ibid., p. 372. ‡ Ibid., p. 395.

interest to afford every facility to draw our produce to Quebec." *

Here negotiations rested for many years. The trade between the United States and Canada had taken a very different turn. Lumber, instead of being sent abroad from Northern New York, was imported into the United States from Canada. The canal system of the State of New York seemed to answer all the needs of the inhabitants of this part of the country. But in 1854 the disputes about the rights of fishery led to the conclusion of a treaty, which, while regulating this subject, agreed for a commercial reciprocity between Canada and the United States. By the fourth article it was agreed that the citizens of the United States should have the right to navigate the river St. Lawrence and the canals of Canada, which had been constructed since the previous negotiations, as a means of communicating between the great lakes and the Atlantic Ocean; but the British government retained the right of suspending this privilege on giving due notice. As an equivalent to the privilege of navigating the St. Lawrence, British subjects were given the right to navigate Lake Michigan. Evidently by this treaty we obtained the navigation of the St. Lawrence as a concession and not as a right. The treaty was made terminable after ten

* Gallatin's Writings, ii., p. 403.

years on a twelvemonth's notice by either party. During the war of the Rebellion, owing partly to the predominance of protectionists in Congress, who objected to the comparative free trade with Canada, and partly to the feeling against the Canadians arising out of various incidents connected with the war, the United States gave notice for the termination of this treaty, and the treaty accordingly came to an end on March 17, 1866.

The question remained in this state until the negotiations at Washington, which resulted in the treaty of May 8, 1871. Among the various subjects treated by the high commissioners was the navigation of the St. Lawrence River. We still claimed that navigation as a right. The British commissioners were willing to yield it as a concession, provided that we should give the right of navigation of Lake Michigan as an equivalent. This our commissioners absolutely refused. The subject was several times discussed, and finally they were asked whether, if the St. Lawrence were declared free, we would admit the same rights to certain rivers rising in the British territories, passing through the province of Alaska, and emptying into the Pacific Ocean. This the United States took under consideration, and the result was the twenty-sixth article of the treaty, which stated that

"The navigation of the river St. Lawrence, ascending and descending, from the forty-fifth parallel of north latitude, where

it ceases to form the boundary between the two countries, from, to, and into the sea, shall *forever* remain free and open for the purposes of commerce to the citizens of the United States, subject to any laws and regulations of Great Britain, or of the Dominion of Canada, not inconsistent with such privilege of free navigation."

The rivers of which we granted the free navigation to British subjects were the Yukon, the Porcupine, and the Stikine. The British government engaged to urge upon the Dominion of Canada to secure to the citizens of the United States the use of the Welland, St. Lawrence, and other canals in the Dominion on terms of equality with the inhabitants of the Dominion. The United States gave the use of the St. Clair Flats' Canal on equal terms, and engaged to urge upon the State governments to secure for British subjects the use of the several State canals connected with the navigation of the lakes or rivers traversed by the boundary line. We also granted the use for ten years of the navigation of Lake Michigan, as an equivalent for certain fishing rights on the coast, and terminable with them. Those rights having now terminated, the privilege of navigating Lake Michigan has also ended.

C.—THE NORTH PACIFIC OCEAN.

American Enterprise in the Pacific.—The Russian-American Company.—The Russian Ukase of 1821.—Negotiations.—Treaty of 1824.—Further Proposals.—Public Opinion.—Negotiations of 1834.—Treaty of 1867 ceding Russian America.

YEARS before the United States possessed a foot of land on the Pacific coast, adventurous American seamen had doubled Cape Horn. In the autumn of 1788 the ship Columbia, of two hundred and twenty tons, and the sloop Washington of ninety tons, arrived in Nootka Sound from Boston, passed the winter there, explored Queen Charlotte's Sound and the Strait of San Juan de Fuca. The Columbia took a cargo of furs to Canton, and thence a cargo of tea to Boston, being the first vessel to carry the American flag round the world. From that time on until 1814 the direct trade between the American coasts and China was almost entirely carried on in American vessels. The opposition of the East India Company prevented British merchants from engaging in this trade; entrance to the Chinese ports was forbidden to Russian ships; and there were few ships of other nations in that part of the Pacific. After the fur-trade on the northwestern coasts had been reorganized by the foundation, in 1798, of the Russian-American

Company, there were complaints against the Americans of furnishing arms and ammunition to the natives, and had it been possible for the Russians to carry on their commerce without our aid, they would gladly have excluded our vessels. In 1806 the question of expelling the Americans was settled for the time by the fact that the Russian garrison and settlers at Sitka would all have died of hunger, but for the opportune arrival of the American ship Juno.* Three years later the Russian government made representations to the United States on the subject of the illicit trade, which, it was alleged, our citizens carried on with the natives of the North Pacific coasts, and desired that we should make a convention, or at least pass an act of Congress to hinder the sale of spirits, arms, and ammunition in those parts. Finally, Russia proposed an arrangement by which American vessels should supply the Russian settlements on the Pacific with provisions and manufactures, and should do the carrying trade to Canton, on condition of abstaining from intercourse with the natives. There were several reasons for not accepting this proposition, but especially because it was claimed that the Russian possessions extended southward to the mouth of the Columbia River. We were then engaged in a dispute with Great Britain about this

* History of Oregon and California, by Robert Greenhow.

very coast, and naturally could not admit the claims of Russia.*

The trading post of Astoria, founded by Mr. John Jacob Astor, was taken by the British during the war; it was found impossible in the treaty of Ghent to settle the boundary line westward of the Lake of the Woods; and by the Convention of 1818 the northwest coast westward of the Rocky Mountains was, for ten years, left free and open to the vessels, citizens, and subjects of the two powers, without prejudice to their respective claims. In December, 1820, immediately after the ratification of the Florida treaty, a resolution was passed by the House of Representatives "that an inquiry should be made as to the situation of the settlements on the Pacific Ocean, and as to the expediency of occupying the Columbia River." A favorable report was made, and a bill was introduced for the occupation of the Columbia River, which was, however, suffered to lie on the table for the rest of the session.

Such was the state of affairs when suddenly, at least to us, in September, 1821, the Emperor Alexander issued a ukase to the effect that

"The pursuits of commerce, whaling, and fishery, and of all other industry on all islands, ports, and gulfs, including the whole of the northwestern coast of America, beginning from

* For the papers, see Foreign Relations, folio, v., pp. 432-471.

Behring's Straits to the fifty-first degree of north latitude, also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands from Behring's Straits to the South Cape of the island of Urup, viz., to 45° 50′ north latitude, are exclusively granted to Russian subjects. It is therefore prohibited to all foreign vessels not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach within less than one hundred Italian miles. The transgressor's vessel is subject to confiscation along with the whole cargo."

The first information of this was received by our Government in a note from Mr. Poletica, the Russian minister, dated February 28, 1822, which gave the whole history, from Russian sources, of the Russian discovery of the northwestern coast of America and the subsequent settlements there. There was much reference to the accounts of Russian explorers, all of which are now perfectly well known to geographers, but which at that time, not having been published in English, were looked upon with considerable distrust by our Government. Mr. Poletica defended the choice of the fifty-first parallel upon the ground that this was midway between Sitka and the establishment of the United States at the mouth of the Columbia, and maintained that Russia would be justified in exercising the right of sovereignty over the *whole* of the Pacific Ocean north of the fifty-first parallel, as that section of the sea was bounded on both sides by Russian territories, and was thus, in fact, a *close sea*.

With regard to this unwarrantable extension of the doctrine "of the King's chambers," Mr. Adams quietly remarked that the distance between the shores of Asia and America, on the parallel of fifty-one degrees north, is four thousand miles, and said:

"From the period of the existence of the United States as an independent nation, their vessels had freely navigated those seas; and the right to navigate them was a part of that independence, as also the right of their citizens to trade, even in arms and munitions of war, with the aboriginal natives of the northwest coast of America, who were not under the territorial jurisdiction of other nations."

He at the same time denied the Russian claim to any part of America south of fifty-five degrees.

This ukase was undoubtedly due to the great influence which the Russian-American Company then possessed at the Russian court. Professor F. von Martens, the Russian publicist, now brings up the one-hundred-mile limit contained therein, as an instance of "greatly exaggerated claims." *

Mr. Middleton, our minister at St. Petersburg, wrote on the subject on August 20, 1822:

"Baron de Tuyl is coming out as minister from Russia, charged with a proposal for negotiating on the subject."

Mr. Speransky, then Governor-General of Siberia, had told him that the Russians had at first thought

* Völkerrecht, i., p. 380.

of declaring the North Pacific ocean a *mare clausum*, but afterward took one hundred Italian miles from the thirty leagues in the treaty of Utrecht, which is an exclusion only from "a fishery and not from navigation." *

Baron de Tuyl duly came, was found by Mr. Adams "more agreeable, much more complaisant than his predecessor," and showed every disposition to come to an arrangement. The controversy, however, was chiefly carried on at St. Petersburg. When the Cabinet considered the instructions for Mr. Middleton, Mr. Adams said: "I thought no territorial right could be admitted on this continent, as the Russians appear to have no settlement upon it except that in California." He was thereupon authorized to draft instructions for Mr. Middleton who was,

"First, to propose an article similar to that in our convention with Great Britain of October, 1818, agreeing that the whole coast should be open for the navigation of all the parties for a definite term of years, and as there would probably be no inducement for the Russians to agree to this, he should then offer to agree to the boundary line for Russia at the fifty-fifth degree, on condition that the coast might be frequented for trade with the natives, as it has been heretofore."

Mr. Adams devoted great attention to the subject, reading up all the books of travel and discovery on the northwest that he was able to lay his hands upon,

* Memoirs of John Quincy Adams, vi., p. 93.

and wrote subsequently in his diary, on July 1st: "I find proof enough to put down the Russian government, but how shall we answer the Russian cannon?" * A few days later the Russian minister held a friendly conversation with him, and desired to know the purport of the instructions to Mr. Middleton, which were told him. Mr. Adams says:

"I told him specially that we should contest the right of Russia to *any* territorial establishment on this continent; and that we should assume distinctly the principle that the American continents are no longer subjects for *any* new European colonial establishments." †

This was the first hint of the policy which afterward came to be known as the Monroe doctrine.

While negotiations were going on at St. Petersburg, Baron de Tuyl was from time to time anxious and troubled in mind. At one time he brought Mr. Adams an account of the toasts that had been drunk at a dinner given to Commodore Hull, who was going to take command of a Pacific squadron. These toasts were belligerent in tone, and the minister was fearful lest there might be bloodshed, although the Russian cruisers had received the most specific instructions. At another time the Baron brought a *Washington Gazette*, with a paragraph taken from the Boston *Sentinel*, purporting to be a letter from Washington, which he thought would be annoying to

* Memoirs of John Quincy Adams, vi., p. 159. † Ibid., p. 163.

the Emperor. He said that the Emperor entered much into the spirit of the age, and was solicitous to stand fair in public opinion. "I took the paper," said Mr. Adams, "and told him I would prepare a paragraph on the subject." The paragraph, of a quieting nature, duly appeared as an editorial in the *National Intelligencer*, and Baron de Tuyl immediately came to thank the secretary for his courtesy in publishing it.

The negotiations of Mr. Middleton resulted to our satisfaction. The Russian government gave way, and by a convention concluded on April 17, 1824, it was agreed that the southern boundary of the Russian possessions in America should be placed at 54° 40′ north latitude; that navigation and fishing should not be disturbed or restrained upon points not already occupied; but that the citizens of the United States should not resort to any point where there was a Russian establishment without the permission of the governor or commander; and, reciprocally, that the subjects of Russia should not resort, without permission, to any establishment of the United States upon the northwest coast. The sale of spirituous liquors, or fire-arms or other arms, powder or munitions of war, to the natives was forbidden. Nothing was said in the treaty itself about the Asiatic coast.

Some time after the treaty had been signed the

Russian-American Company made loud outcries and exerted special influence to prevail on the Russian government to send new instructions to their minister. In an interview on August 23, 1824, Baron de Tuyl related his perplexities to Mr. Adams, and said that he would like an explanatory note to be signed, showing that the Russian government did not understand that the convention would give liberty to the citizens of the United States to trade on the coast of Siberia and in the Aleutian Islands. He also wanted a modification of the treaty, which would keep vessels from trading north of the fifty-seventh degree. Mr. Adams represented the difficulties in the way of complying with these requests; that owing to our form of government no explanatory note signed simply by the Executive would be sufficient; and that if any change was to be made, it was far better to make a new convention. He advised the Russian minister to wait until the treaty was ratified, and then if his government, on second thought, still desired it, he could present his note. Baron de Tuyl, who himself doubted about the wisdom of the Russian proposals, accepted the suggestion, withdrew the memorandum he had presented, and begged it to be considered as *non avenu.* The treaty was ratified, and that was the end of the Russian proposal.

This dispute with Russia made a far deeper impression than we should now think. The newspapers

were full of paragraphs and squibs.* The end was, however, very satisfactory to us. Mr. Madison, in writing to President Monroe on August 5, 1824, said:

"The convention with Russia is a propitious event in substituting amicable adjustment for the risks of hostile collision. But I give the Emperor little credit for his assent to the principle of *mare liberum* in the North Pacific. His pretensions were so absurd, and so disgusting to the maritime world, that he could not do better than retreat from them through the forms of negotiations. It is well that the cautious, if not courteous, policy of England toward Russia has had the effect of making us, in the public eye, the leading power in arresting her expansive ambition." †

In May and June, 1822, the English papers had a good deal to say about the subject, and the London *Times* remarked:

"Luckily for the world the United States of America have not submitted with equal patience to the decrees of the autocrat. An important discussion is now depending between these two countries, a discussion in which we, however, are more deeply interested than the United States."

* Here is one from the Baltimore Chronicle, reprinted in Niles' Register on May 10, 1823:

"Old Neptune one morning was seen on the rocks,
Shedding tears by the pailful and tearing his locks;
He cried, a *Land Lubber* has stole, on this day,
Full four thousand miles of my ocean away;
He swallows the *earth* (he exclaims with emotion),
And then to quench appetite, *slap* goes the ocean;
Brother Jove must look out for his skies, let me tell ye,
Or the Russian will bury them all in his belly."

† Madison's Works, iii., p. 446.

This was preceded and followed by violent abuse of the English government for taking no steps itself. The Liverpool *Mercury* of May 31st followed in much the same strain.* Sir James Mackintosh did, however, during that session of Parliament, make a question of that subject. In the subsequent year, on May 21, 1823, he again raised the question, and Mr. Canning replied that a protest on the part of England had been made on the first promulgation of those principles, which had been renewed and discussed at the Congress of Verona, and had been again presented in subsequent negotiations which were still pending at St. Petersburg.

The fourth article of the treaty, which gave for ten years the right of fishing and trading in the bays, creeks, harbors, etc., of the northwestern coast, expired in 1834. The Russians claimed that, in spite of the provisions of the treaty, American vessels in pursuit of their fisheries had sold spirituous liquors and fire-arms to the natives; and the Russian minister, therefore, by instructions from his government, informed the Secretary of State of the expiration of the fourth article of the treaty, and begged him to have an official notification of some kind issued to that effect. Russia at the same time claimed a right of possession down to 54° 40′ of north latitude. Mr. Forsyth objected to an official notification, but consented to an

* Niles' Register, July 27, 1822.

unofficial announcement in the *Globe*, to the effect, that, since the expiration of the fourth article, American vessels would be bound by the other articles of the treaty, and could frequent those parts of the coast occupied by Russia only by the consent of the Russian commanders. Mr. Wilkins, and subsequently Mr. Dallas, our ministers to St. Petersburg, were instructed to negotiate for a continuance, either in perpetuity or for a term of years, of the fourth article. We refused to admit that we had implied by the treaty of 1824 any acknowledgment of the right of Russia to the possession of the coast above the latitude of 54° 40′. Mr. Forsyth argued that if we had implied any such right, Russia, in the same way, would have implied the right of the United States up to that limit; whereas by a subsequent treaty with Great Britain in 1825, expressed in much the same terms, the right to the same territory by Great Britain was also acknowledged. Even had it been inferred from our agreeing not to occupy any points north of 54° 40′, that we acknowledged the Russian right to the whole of the coast, it did not follow that the United States ever intended to abandon the right gained by the first article, as belonging to them under the law of nations, of frequenting the unoccupied parts of the coast for purposes of fishing or trading with the natives. Count Nesselrode, however, without attempting to controvert the arguments advanced by Mr. Forsyth

and Mr. Dallas, refused to renew the fourth article of the convention. A similar refusal was made to Great Britain, whose rights had also lapsed in the year 1835. In 1839 the charter of the Russian-American Company was renewed for twenty years, and in point of fact the vessels of the United States, as well as those of Great Britain, were excluded from the ports and harbors of the coast of Russian America from that date.*

All questions that might possibly arise were fully settled by the treaty of March 30, 1867, negotiated by Mr. Seward, by which, for the sum of $7,200,000 in gold, the whole of the Russian possessions in America, free and unencumbered by the privileges of any company, were ceded to the United States.

One question, however, arose out of this treaty. Those Russian subjects who chose to remain after three years had the right of becoming Americans. They had churches and other establishments of the Russian Orthodox Church. In order to provide for their spiritual welfare the Russian Synod appointed an archbishop, with his seat at San Francisco. The American chargé d'affaires, believing that the precedent was of some importance, immediately gave notice of this appointment to his Government and suggested that some action be taken. The Secretary of State, however, gave him no instructions on the

* Congressional Doc., Session 1838–39.

subject, and without them he did not feel authorized to protest. At the same time he felt that the case was very different from the appointment of bishops of the Catholic Church by the Pope. The Russian Synod is a part of the temporal institutions of the Russian empire, and a Russian bishop in America is paid by, and is an official of, the Russian government as distinguished from the Russian Church, and is yet allowed to exercise an authority in the United States without any control over him by the United States authorities, even a control such as is exercised over consular officers.

D.—THE SOUND DUES.

Origin of these Dues. — Tariff of Christianople. — Clay. — Wheaton.—Webster's Report.—Burden upon Trade.—Upshur's Report.—Buchanan's Instructions to Flenniken. —Our Proposition for Compensation.—Its Withdrawal by Mr. Marcy.—Our Notice to Terminate our Treaty.—Danish Proposition for Capitalization.—President Pierce's Message.—European Congress.—Treaty of Capitalization. —Our Separate Treaty.

FROM an early time Denmark had claimed the right of imposing duties and marks of ceremonial respect on all merchant vessels passing through the Sound or the great Belts that connect the Baltic with the North Sea. We find mention of these dues as early as 1319, when they were to some extent regulated. Complaints of their exorbitant character were made at different times, and by treaties and conventions they were lowered. They were finally regulated by the treaty of Christianople in 1645, explained by another treaty in 1701, and continued in that form up to the present century. The right to impose them was tacitly admitted by all the commercial states of Europe.

The tariff of duties imposed by the treaty of Christianople was somewhat peculiar. The theory was that one per cent. of the value of all the articles was to be paid; and a tariff was drawn up commuting these to specific duties on the chief articles of commerce based

on the value at the time. In the lapse of two centuries not only had the actual value in money of articles of commerce decreased so that the specific duties represented three, four, and five per cent. of their value, but many new articles of commerce were carried into the Baltic, the valuation of which was arbitrary. Countries, besides, were divided into privileged and non-privileged, the former meaning those who had made special treaties with Denmark: non-privileged nations paid duties a fifth higher.

The income derived from the Sound dues was, owing to the large commerce of the Baltic, a very important branch of the Danish revenue, amounting to two and sometimes two and one-half millions of rix-dollars per annum. Fifty years ago our commerce on the Baltic, which was very little with Denmark itself, brought into use about one hundred vessels a year. As American vessels, having to cross the ocean, were of larger size than those of European nations, we paid higher duties in proportion to the number of vessels, averaging some years as much as $100,000.

The attention of our Government was first apparently called to the subject in 1826, when Mr. Clay succeeded in negotiating a general treaty of friendship, commerce, and navigation with Denmark, by which vessels of the United States, in passing the Sound or the Belts, were not to pay higher duties than those paid by the most favored nation. Mr. Clay did not

apparently question the prescriptive right of Denmark to take these duties, and was satisfied to reduce them thus by a fifth of their amount. Mr. Wheaton, during his residence as minister in Denmark, from 1827 to 1835, studied the history and the effects of the Sound dues; and from his despatches Mr. Webster, soon after entering upon his office as Secretary of State, made a report to the President, with a view of beginning negotiations for a reduction of the duties; for there was at that time a general movement on the part of the northern powers of Europe for the purpose of obtaining a modification of the regulations of the Sound, which would remove certain grievances which were a great burden upon commerce. Apart from the Sound dues themselves, there were charges of light-money, pass-money, etc., which caused a delay at Elsinore, where vessels were obliged to stop for the purpose of paying the dues; and, as their collection was attended by vexatious delays and unnecessary ceremonies, the port charges sometimes amounted to a large sum. Vessels bound to, or returning from, ports in the Baltic were obliged to lower their topsails before the castle of Kronenberg in token of respect; to submit to an examination of their cargoes at Elsinore; frequently to encounter a delay arising from the limited number of hours during which the custom-house was open, which was tedious, and in that sea often dangerous. Mr. Webster says:

"The amount of our commerce with Denmark direct is inconsiderable compared with our transactions with Sweden, Russia, and the ports of Prussia, and the Germanic association of the ports of the Baltic; but the sum annually paid to that government in Sound dues, and the consequent port charges, by our vessels alone is estimated at something over one hundred thousand dollars. The great proportion of this amount is paid by the articles of tobacco, sugar, cotton, and rice, the first and last of these paying a duty of about three per cent. ad valorem, reckoning every value from the places from which they came. By a list published at Elsinore in 1840 it appears that, between April and November of that year, seventy-two American vessels, a comparatively small number, lowered their top-sails before the castle of Kronenberg. These were all bound up the Sound to ports on the Baltic, with cargoes composed in part of the above-named products, upon which alone according to the tariff was paid a sum exceeding forty thousand dollars for these dues. Having disposed of these cargoes they returned laden with the usual productions of the countries on the Baltic, on which, in like manner, were paid duties on going out of the Sound, again acknowledging the tribute by an inconvenient and sometimes hazardous ceremony." *

At the time when Mr. Webster took up this subject England, owing to the complaints of her merchants, was negotiating with Denmark, and eleven days after the date of Mr. Webster's report an arrangement was made far more satisfactory to the commercial world. The specific duties imposed by the treaty of Christianople remained unchanged, but the tariff for non-enumerated articles was carefully revised

* Report of May 24, 1841, Webster's Works, vi., p. 406.

and greatly reduced, although the system operated unequally. The tariff on raw sugar, for example, was reduced from nine to five stivers per one hundred pounds. But even this amounted to about two per cent. on the value of common sugar; and it was found upon examination that, owing to Russia, they equalized the duty upon all unrefined sugars, and only the better kinds of white Havana were sent up the Baltic, so that the commissioners had fixed upon a valuation which nearly doubled the proportion to be paid by the low-priced sugars. The rule requiring the lowering of the top-sails, in token of respect, was abolished, important reductions were made in port charges, the hours of the custom-house were extended, and the visitation of vessels dispensed with. Upon receiving information of the new tariff and regulations, Mr. Webster expressed satisfaction, and as far as he was concerned the correspondence closed.

Not every one, however, was as satisfied as Mr. Webster. Prussia, especially, felt very much aggrieved, and for a long time hesitated about accepting the new tariff, as the dues at the entrance of the Baltic were an obstacle to all Prussian commerce. The merchants of the sea-towns made strong representations to the government, and a vigorous effort was made for the capitalization or entire abolition of the duties. Owing, however, to the personal influence of the King of Denmark, and the influence upon Prussia

from England and Denmark, Prussia in 1846 accepted the new tariff, and even did more. Following the example of Russia, it demanded attestations of having paid the duties at Elsinore before a ship was allowed to discharge its cargo.

The hopes of the mercantile world now rested on the efforts of the United States. Mr. Upshur, who had succeeded Mr. Webster in 1843, made another communication to the President on the subject, in which he took stronger grounds. He said:

"Denmark continues to this day without any legal title to levy exceedingly strange duties on all goods passing the Sound. Denmark cannot lay claim to these duties upon any principle either of nature or of the law of nations, nor from any other reason than that of antiquated custom. It renders no service in consideration of that tax, and has not even such rights as the power to enforce it would give. Great and general is the discontent felt by all nations interested in the Baltic trade on account of that needless and humiliating tribute. For the United States the time has come when they can appropriately take decisive steps to free their Baltic trade of this pressure."

The report of Mr. Upshur created considerable excitement and consternation in Denmark, but his plans came to an end with the accident on the Princeton in which he lost his life. His successor, Mr. Calhoun, attempted nothing beyond the collection of information.

Meanwhile every year the Chamber of Commerce of Stettin presented the subject again to the Prus-

sian government as a canker on Prussian commerce; and after the troubles between Prussia and Denmark in consequence of the Slesvig-Holstein difficulties, as it appeared likely that in arranging the peace the Prussians might insist on the total abolition of the Sound dues, Mr. Buchanan, then Secretary of State, instructed Mr. Flenniken, our chargé d'affaires, to negotiate for a new treaty of commerce, providing for exemption from the Sound dues—a perpetual exemption, if possible. As there would be considerable delay in obtaining an act of Congress giving notice of the termination of the existing convention with Denmark, and there would be twelve months' delay after giving such notice, while a new treaty, if made, would cut off the Sound dues two years earlier than could be done otherwise, Mr. Flenniken was empowered to offer to the Danish government, $250,000 as an indemnity for the amount which would thus be lost, provided that the exemption from the Sound dues should be made perpetual. This proposition, which was expressly stated to be not for the purchase of a right enjoyed by Denmark, but as an equitable equivalent for that branch of her revenue which she would thus give up, and mainly to furnish a liberal precedent on the part of the Government, which was strictly under no obligations to pay, in order that Denmark might be enabled to settle profitably with European nations, who were, in fact,

under obligations to submit, was received with satisfaction by the Danish ministry. The resumption of hostilities with Germany, however, broke off the negotiations.

Mr. Marcy, on July 18, 1853, instructed the new chargé d'affaires, Mr. Beddinger, to press the matter of the Sound dues to a conclusion; and in his despatch, after giving an account of the history of the Sound dues, took the decisive stand that the United States can recognize no immemorial usage as obligatory when it conflicts with natural privileges and international law. The previous offer for payment was withdrawn, and the Secretary declined authorizing the offer to Denmark of any compensation for the removal of that as a favor which we had demanded as a right. There was great delay at Copenhagen, partly on account of the general state of European politics, and partly, in the opinion of our legation as well as of the Prussian mercantile bodies, through the influence of Russia, who desired to keep in the hands of Denmark the power of closing the Baltic in case of need. In March, 1854, the Danish government intimated that they would make an effort to enter into an arrangement with all the powers for the abolition of the Sound tolls, upon receiving a certain compensation. But nothing was done until President Pierce, in his annual message of December 4, 1854, recommended to Congress that notice should

be given for terminating the convention of 1826. The Danish legation at Washington immediately presented a statement of what the Danes considered the proper nature of the right they claimed. The substance was, that the right of Denmark to the Sound dues is a right existing under the laws of nature by immemorial prescription, and therefore independent of all treaties; that the abrogation of the convention of 1816 would, therefore, not restore any rights to the United States, or take any from Denmark. As the Danish government steadily refused to listen to any proposition for the abolition of the dues without an equivalent, and as the United States as steadily refused to offer any bribes for that which was clearly our right, notice was given, April 14, 1855, that after the expiration of a year the convention would be terminated.

Finding herself thus hardly pressed—for the action of the United States found sympathy in the whole commercial world—Denmark, in October, 1855, suggested a project of capitalizing the Sound dues, proposing that the quota to be paid by each nation should be estimated by the quantity of merchandise passing through the Sound and Belts, as far as the Sound dues proper were concerned; and by the number of vessels to each flag, as regards the light-money and similar duties. Two conditions were made: 1, That this arrangement should be concurred in simul-

taneously by all the powers interested; and 2, that the affair in question should be treated not as a commercial or money transaction, but as a political matter. This last condition was sufficient to make the United States decline to take any part in this European convention. The cogent reasons, as stated by President Pierce, in his message of December, 1855, were as follows:

"One is that Denmark does not offer to submit to the convention the question of her right to levy the Sound dues; and, the second is, that if the convention were allowed to take cognizance of that particular question, still it would not be competent to deal with the immediate and important international principle involved, which affects rights in other cases of navigation and commercial freedom, as well as that of access to the Baltic. Above all, by the express terms of the proposition, it is contemplated that the consideration of the Sound dues shall be commingled with, and made subordinate to a matter wholly extraneous—the balance of power among the governments of Europe. While, however, rejecting this proposition, and insisting on the right of free transit into and from the Baltic, I have expressed to Denmark a willingness on the part of the United States to share liberally with other powers in compensating her for any advantages which commerce shall hereafter derive from expenditures made by her for the improvement and safety of the navigation of the Sound or Belts."

The European Congress, nevertheless, met at Copenhagen in the winter of 1856, and its result was the treaty of March 14, 1857, by which the Sound dues were forever abolished, in consideration of a payment

once for all of 35,000,000 rix-dollars. In fixing this sum the Danes had reduced their claims, setting the annual income at 1,750,000 instead of 2,250,000 rix-dollars, which it had produced for many years. Twenty years' purchase gave 35,000,000 rix-dollars. The proportion of England was more than one-third of the whole; that of the United States was 2,100,000 rix-dollars, or $1,050,000.

The United States, for reasons already given, refused to become a party to this treaty, and subsequently, on April 11, 1857, made a similar treaty, by which 717,829 rix-dollars, or $393,011 United States currency, were paid to Denmark, in consideration of an agreement to keep up lights, buoys, and pilot establishments in those waters, and of the total and perpetual abolition of all dues on American vessels.*

* The official correspondence is found in H. R. Ex. Doc., No. 108, 33d Congress, 1st Session, and Senate Ex. Doc., No. 28, 35th Congress, 1st Session.

E.—THE BOSPHORUS AND THE DARDANELLES.

WHEN the whole of the shores of the Black Sea were in the exclusive possession of Turkey, that sea was entirely closed even to the commercial vessels of foreign powers. When Peter the Great, in 1700, attempted to obtain the right for his merchant vessels to trade on the Black Sea, the reply of the Turks was:

"The Ottoman Porte guards the Black Sea like a pure and undefiled virgin which no one dares to touch; and the Sultan would sooner permit outsiders to enter his harem than consent to the sailing of foreign vessels on the Black Sea. This can only be done when the Turkish empire shall have been turned upside down." *

When this process was accomplished to such an extent that the Russians had made large acquisitions on its shores, they had, according to the common law of European nations, a right to navigate the Black Sea and pass outward into the Mediterranean. But the Turks at this time recognized no principles of international law in common with Europe, and the right could be only obtained by the express stipulations of treaties. The first of these stipulating for the free navigation of the straits by merchant vessels was made with Russia in 1774, followed by one with

* Schuyler, Peter the Great, i., p. 362.

Austria in 1784, with Great Britain in 1799, with France in 1802, and with Prussia in 1806. The United States had no treaty rights on this subject until 1830, when they were given

"The liberty to pass the canal of the imperial residence, and go and come in the Black Sea in like manner as vessels of the most favored nations."

And the treaty of 1862 provided that clearance required for the passage of an American vessel should be delivered with the least possible delay. By the treaty of Paris in 1856, as modified by the treaty of London in 1871, the Black Sea was thrown open to merchant vessels of all nations; but the straits are closed to ships of war, except that the Sultan has the faculty of opening them in time of peace to the war vessels of friendly and allied powers in case he deems it necessary for carrying out the stipulations of the treaty of Paris. The United States have never adhered to either of these treaties, and have always maintained that their right to send ships of war into the Black Sea cannot be legally taken from them by any arrangement concluded by European powers to which they are not parties. No attempt, however, has ever been made to exercise these rights. All American ships of war have, while reserving all question of right, asked permission of the Porte to pass the Dardanelles.

F.—THE RIVER PLATE.

River Systems of South America.—European Intervention at Buenos Ayres.—Decree of Urquiza.—Treaty of San José de Flores.—Difficulties.—Solution of Mr. Schenck.—Opposition of Brazil.—The Water Witch.—Trouble with Paraguay.

CIVILIZATION in South America is, to a certain extent, dependent upon the river systems, and by the two great rivers, the Amazon and the river Plate (La Plata) access is gained to the whole interior of the continent. The foreign relations of a state like Paraguay are entirely dependent upon the freedom of river navigation, for it has no access to the ocean except by the rivers Paraguay and La Plata. Although Bolivia has a small extent of sea-coast and one port—Cobija—for commercial purposes it can be more easily reached by the Madeira, a branch of the Amazon, or the Pilcomayo, a branch of the Paraguay. Through the Amazon also there is access to the eastern parts of Peru, Ecuador, and New Grenada, and even during the rainy season to portions of Venezuela.

The attainment of the independence of the various states of South America was followed by intestine struggles, and during these the government of Buenos Ayres, basing its action on a treaty concluded in 1825, between the United Provinces of Rio de la Plata and

Great Britain, claimed the right of opening or shutting at pleasure the river La Plata, and thus cutting off the access of Paraguay and of the interior provinces to the sea. England and France vainly strove to bring over General Rosas to more liberal views with regard to river navigation; but he held firm. When a joint intervention was proposed in 1845 by England and France in the affairs of La Plata, Guizot wrote:

"We must ask as an accessory and consequence of our intervention, the application of the principles established by the Congress at Vienna for the free navigation of rivers in relation to those which, flowing from the frontiers of Brazil and Paraguay, throw themselves into the Atlantic."

England, however, on November 24, 1849, signed a treaty with Rosas in its own interest, which recognized the navigation of the Parana as being purely internal. A similar treaty made by France was rejected by the National Assembly. The closing of water communications, together with the struggle at Montevideo, finally wearied the patience of the interior states, and General Urquiza, the governor of the state of Entre Rios, in conjunction with the Brazilian government, first defeated General Oribe before Montevideo, and subsequently broke the power of Rosas. By one of the five treaties which Urquiza made with Brazil on October 12 and 13, 1851, the navigation of the Uruguay and its branches was declared common

to the contracting states, and the other riparian states of La Plata were invited to agree to a similar arrangement, so as to make free the navigation of the Parana and the Paraguay. One of the first measures of Urquiza, after the defeat of Rosas and his own election as provisional director of the Argentine Confederation, was a decree of August 28, 1852, declaring the navigation of the rivers in the Confederation free to all flags.

The United States was the first country to avail itself of these new privileges, and immediately fitted out the steamer Water Witch, under the command of Lieutenant Thomas Jefferson Page, to explore and survey all the rivers emptying into La Plata. At the same time Mr. Robert C. Schenck, our minister at Rio de Janeiro, was instructed to go to Buenos Ayres, and together with Mr. John S. Pendleton, our chargé d'affaires there, to conclude all necessary treaties required by our commercial interests, and for the openings of the rivers. Before his arrival, Mr. Pendleton had already gone up to Asuncion and concluded a commercial treaty with Paraguay, on March 4, 1853, which provided also for the free navigation of the river Paraguay as far as the dominions of the empire of Brazil, and of the right side of the Parana throughout all its course belonging to the republic.

The English at the same time had empowered Sir Charles Hotham, and the French their minister at

Rio de Janeiro, the Chevalier St. Georges, to negotiate similar treaties for free navigation with the Argentine Confederation. As the object of the three governments was exactly the same, the plenipotentiaries agreed to work together, and the main burden of the negotiation was entrusted to Mr. Schenck. Buenos Ayres, where the plenipotentiaries lived, was in a state of close siege and blockade, the province of Buenos Ayres having expressed an intention of seceding from the Confederation, and having refused to recognize the authority of General Urquiza. It was necessary for the plenipotentiaries to go backward and forward between the city and the camp of Urquiza under escort. They endeavored in vain to mediate between the contending parties, and finally, when the squadron of the Confederation was treacherously surrendered to the government of Buenos Ayres, General Urquiza retired, and the plenipotentiaries followed him to his camp at San José de Flores, where separate but identical treaties, providing for the perpetual free navigation of the rivers Parana and Uruguay were signed on July 10, 1853. At the last moment two difficulties arose—one with regard to the little island of Martin Garcia, which was in a position, if held by Buenos Ayres, to impede free navigation, and of which Urquiza desired the negotiating countries to guarantee the possession to the Argentine Confederation. Mr. Schenck, at least, did

not feel authorized to give the guarantee of the United States, and finally it was agreed to insert a clause that the contracting parties should "agree to use their influence to prevent the possession of the said island from being retained or held by any state of the river Plate or its confluents which shall not have given its adhesion to the principle of their free navigation." This influence might be greater or less, according to circumstances, and it was never actually necessary to use force. The other point was a constitutional one. The constitution of the Argentine Confederation had been modelled after that of the United States, which in many places it had copied word for word. A special article, however, had been inserted, that the navigation of the interior rivers of the Confederation could be made free to all the world, subject only to regulations to be established by the national authority. It was suggested that the proposed treaties would be in conflict with this article of the constitution. As the whole subject had been removed from the treaty-making power, and left only within the jurisdiction of Congress, it was claimed that the legislative power was the only national authority that could prescribe the needed regulations for such free navigation. The plenipotentiaries at first thought their case hopeless; but Mr. Schenck succeeded in satisfying General Urquiza that the proper interpretation of the constitution was that treaties,

regularly concluded either by the provisional Executive or made by the President and approved by Congress after the organization under the constitution, were to be taken, as in the United States, as "the supreme law of the land," and that "regulations" established by treaty must be considered as much sanctioned by "national authority" as if enacted in the shape of statute law. *

After the treaty had been signed and ratified by General Urquiza, the province of Buenos Ayres made a protest, declaring that the treaty was not binding upon her, for she had refused to be represented at the Constituent Congress, and was therefore, to all intents and purposes, an independent state. Considering, however, that Urquiza was the legal representative of the other thirteen provinces of the Argentine Confederation, the powers thought best to disregard this protest of Buenos Ayres, leaving her to acknowledge the treaty in the future, or to make new treaties with them to the same effect. The only reply made was the ratification of the treaty by the United States, Great Britain, and France. The Brazilian government, whose aim it was to keep the navigation of these rivers solely to the riparian states, also objected, and the Brazilian minister in Washington presented to our Government a protest, dated November 7,

* Despatch of Mr. Schenck; see La Plata, the Argentine Confederation, and Paraguay, by T. J. Page, p. 575.

1853, against the treaties made with Urquiza, on the ground that "they may prove detrimental to the rights which Brazil possesses as a sovereign nation." Mr. Marcy replied to this by a note of December 16th, in which he disclaimed any intention on the part of the United States of violating any rights of Brazil, but so long as no actual infringement was proved, and merely its possibility suggested, refused to take the protest into account.

Meanwhile the steamer Water Witch, which had been of much service during the negotiations, continued its explorations and made careful surveys of a great part of the river system. Lopez, the President of Paraguay, at first objected very much to allowing, even for scientific purposes, a war vessel to navigate the Paraguayan rivers, on the ground that Brazil might demand the same favor, and until a treaty of limits had been made with that country it might prove a dangerous precedent. He, however, finally yielded, and even the Brazilian government, owing to the representations of Mr. Schenck and his successor, Mr. Trousdale, allowed the expedition to enter the Brazilian portion of the Paraguay.

A series of unfortunate incidents now occurred which prevented the final ratification of the treaty with Paraguay, and brought that country into hostile relations with the United States. Our Government had appointed as consul at Paraguay Mr. Edward A.

Hopkins, who had, in pursuance of a mistaken policy, been allowed to engage in business on his own account. He was a man somewhat visionary, and filled with chimerical ideas, and seemed to aim at acquiring a predominating influence in the Plate country. He used his position as consul not only to carry out these projects, but to assist him in his commercial enterprises. Besides cigar-factories and other enterprises, he had started a steamer company, of which he called himself the agent general. He had, in various ways made himself obnoxious to President Lopez, who, under a republican name, possessed absolute power, and their relations were already strained, when an insult offered to the consul's brother by some soldier, who was driving cattle, brought both parties to such extremities that, although satisfaction was given for the insult, Hopkins' *exequatur* was withdrawn, and he, as well as the other Americans engaged in business at Asuncion, was obliged to leave the country. Just at that time the treaty made with the United States was sent to Lieutenant Page for the exchange of ratifications. It had been so carelessly drawn, through the negligence of Mr. Pendleton, that the Senate had found it necessary to make thirty-two amendments, most of which were merely formal ones; for in few places was even the name of our Government given correctly. The English clerk who had drawn up the treaty had styled our Government at

one time the "United States of North America," at another the "North American Union," etc. Lopez, in his bitterness against Americans and foreigners in general, made the amendments of the Senate a pretext for refusing to ratify the treaty in its new form. He had ratified it once and that was enough. The notes of Lieutenant Page were returned to him without an answer, except that the President did not read English and could not understand them without an official translation. Page, who was hot-headed, lost his temper, and insisted on writing again in English. This the Minister of Foreign Affairs chose to consider as an insult, and Page was obliged to retire.

Soon after this, in October, 1854, a decree was issued prohibiting foreign vessels of war from navigating the rivers of Paraguay—a decree which especially aimed at the explorations of the Water Witch. Page therefore continued his explorations within the limits of the Argentine Confederation; but in descending the river Parana, which was common to the two countries, he got aground, and subsequently, in passing closely under the guns of a Paraguayan fort, the vessel was fired into and the helmsman was killed. This was on February 1, 1855. Our Government at first took no action in the matter, except to send Mr. Richard Fitzpatrick as a special commissioner to exchange the ratifications of the treaty. Mr. Fitzpatrick arrived in November, 1856, but Paraguay again refused to ratify

until the pending questions were settled—not only that of the insult which Lopez claimed to have received from Lieutenant Page of the Water Witch, but also for the reclamations which had been made on the part of the steamer company of Mr. Hopkins. The matter was thereupon brought to the attention of Congress, and on June 2, 1858, the President was authorized to take such action as he deemed necessary. A commissioner was again sent to Paraguay, and a considerable naval force—of nineteen vessels, carrying two hundred guns and twenty-five hundred men—was despatched to the river La Plata. This show of force had its effect. Our commissioner, Mr. James B. Bowlin, arrived at Asuncion on January 25, 1859, and by February 4th succeeded in concluding two treaties—one for the settlement of claims, and the other of commerce and navigation, being an almost exact copy of the original treaty of 1853. These treaties were afterward duly ratified by both sides, and the question was finally settled.*

* The history of this episode may be found in part in the book of Lieutenant Page, cited above; in the *Annuaire de la Revue des deux Mondes*, 1853-59; and in the Messages of President Buchanan, of December 8, 1857, and December 19, 1859, with the accompanying documents.

G.—THE AMAZON.

Our Treaty with Peru of 1851.—Brazilian Intrigues.—Mr. Randolph Clay's Negotiations.—Bolivian Decree.—Peruvian River Ports Opened.—Intrigues at Lima.—England and France.—Mr. Marcy's Reply to the Brazilian Minister.—His Instructions to Mr. Trousdale.—President Pierce's Message.—Peru Changes Face and Accepts Brazilian Doctrines.—Abrogation of Treaty with Peru.—Treaty with Bolivia.—Trousdale at Rio Janeiro.—Brazilian Decree of 1866, Opening the Amazon.—Peruvian Decree.

On July 26, 1851, Mr. J. Randolph Clay, our minister at Lima, concluded a treaty of friendship, commerce, and navigation between the United States and Peru, which was duly ratified on both sides. Three previous treaties of a similar nature had been concluded, and had been approved by the Senate of the United States and ratified by the President, but had all been rejected by the Peruvian Congress. By this treaty Peru agreed to grant to no other nation favors, privileges, or immunities which should not immediately be extended to citizens of the United States; and agreed also that citizens of the United States establishing lines of steam-vessels between the different ports of entry within the Peruvian territories should have all the privileges and favors enjoyed by any other association or company whatever.

Already, before the treaty had been made, Lieuten-

ants Herndon and Gibbon; of the United States Navy, had been sent to Peru with instructions to explore the Amazon and its different branches to the mouth, for the purpose of ascertaining its navigability and its use for commerce. As soon as this expedition was known at Rio de Janeiro, the Chevalier Da Ponte Ribeyro was sent to Peru and Bolivia in order to negotiate treaties for the navigation of the Amazon, "by which the citizens of the United States should be excluded from all participation in the navigation of the Amazon and in the trade of the interior of South America." A treaty was signed between Peru and Brazil on October 23, 1851; and it was agreed by article second that the navigation of the Amazon "should belong exclusively to the respective states owning its banks." It was agreed also that if a Brazilian company of steam navigation were started, Peru would assist it with a yearly subsidy. During the negotiations Mr. Clay had conversations with Mr. Osma, the Peruvian Minister of Foreign Affairs, who stated that the treaty was only one of limits, and would stipulate nothing for navigation. The ministry had changed, and after the signature of the treaty Mr. Clay complained to Mr. Tirado, the Minister of Foreign Affairs, who showed a willingness to evade the actual provisions of the treaty, and proposed to declare several Peruvian towns—Nauta, Loreto, and others on the branches of the Amazon, as

ports of entry—so as to afford the United States plausible grounds to claim the navigation of the Amazon. Mr. Clay bestirred himself to preserve our rights, and as we had no representative in Bolivia, he wrote to Lieutenant Herndon, who was still there, and succeeded in frustrating the designs of the Brazilian minister, who had been empowered also to conclude a treaty with that country. Subsequently, on January 27, 1853, Bolivia opened freely to the navigation of all the world the rivers and navigable waters flowing through Bolivian territory, and emptying into the Paraguay or the Amazon, and besides this, offered $10,000 for the first steam-vessel which should arrive from the sea at any Bolivian river port. In 1852 the Brazilian government gave an exclusive right of steam navigation on the Amazon to the Brazilian Company of Souza. Mr. Clay thereupon called the attention of the Peruvian government to this fact, and also to the decree of Bolivia opening her rivers, and claimed the equal rights granted by our treaty. He endeavored also to secure action by the governments of Ecuador and New Grenada. The Peruvian consul at Rio de Janeiro had made an agreement between Peru and the Souza company, just mentioned, in November, 1852, and this was finally approved by the President of Peru, with the omission of certain articles which were considered objectionable. Shortly after that, in April, 1853, in all prob-

ability owing to the efforts of Mr. Clay, the towns of Loreto and Nauta were made ports of entry, and the privileges given to Brazil were extended to all the most favored nations. Two steamers at the same time were ordered by the Peruvian government from an American, to be delivered at Loreto. Mr. Cavalcanti, the Brazilian minister, protested against this decree, and Mr. Lisboa was sent out by Brazil to New Grenada, Ecuador, and Venezuela for the purpose of making treaties to close the Amazon to the United States. The great argument used was that "the navigation of the Amazon belonged of right exclusively to the nations owning its banks," and in support of this it was constantly brought up, "that if citizens of the United States were allowed once to establish themselves, either for purposes of trade or abode, in the interior of South America, they would inevitably introduce their own institutions and renounce the allegiance of their adopted country."

There was an idea prevalent throughout South America at that time that the United States were bent on annexation. Our filibustering expeditions to Cuba and to Central America, and the bombardment of Greytown, had greatly impressed all South America. It was thought that if our citizens once established themselves there, they would introduce free principles, insist on governing themselves, and finally declare their independence and their annexation to

the United States. Mr. Clay did his best, by private letters and by personal intercourse with the ministers of the other South American republics, to counteract the efforts of Brazil, and was in a measure successful. He persuaded the Peruvian minister to send a circular letter to Brazil, New Grenada, Ecuador, and Venezuela on July 13, 1853, inviting them to treat about the opening of the Amazon. Bolivia was not invited, although it had an equal interest with the others, because that country was then at war with Peru. In this circular Mr. Tirado said:

"The government believes that, considering the ideas of the time, the exigencies of commerce, and of the diplomacy of the world, as well as the necessity of not impeding the evident destiny of these territories and rivers, the most thorough exploration of them and the adoption of a commercial policy which shall reconcile the interests of the world with the interests and rights of the nations in possession, are matters which these last cannot defer."

The Peruvian Congress was about to meet at that time, and Mr. Cavalcanti, the Brazilian minister, tried hard to persuade its members to disapprove of the decree of April 15th. He even published a pamphlet, expressed in violent terms, attributing to the United States views of annexation as the reasons for which they desired to have the Amazon opened to them. Mr. Clay replied, through a friend, with another pamphlet, and then published a Spanish translation, with additions and notes, of Lieutenant Maury's

pamphlet on the Amazon and the Atlantic slope of South America, which was circulated not only through Peru, but also through the other republics of the Pacific coast. This had a very good effect, and the Peruvian Congress appropriated over half a million dollars to carry out the decree of April 15th opening the rivers, as well as to pay the Brazilian Company the $20,000 arranged by the treaty of 1851, without taking any actual vote on the decree itself. The first Brazilian steamer of the Souza Company arrived at the port of Loreto on October 6, 1853, and went further up to Nauta. Its captain had the order to hoist the Peruvian flag on reaching the Peruvian boundary, so as to afford no pretext to other nations.

The representatives of England and France were ordered to follow in the wake of the United States, and Mr. Sulivan, the British chargé d'affaires, on October 25, 1853, demanded the same rights on the Amazon as might be granted to the United States, Brazil, or others, under the treaty with Great Britain of April 10, 1850. He stated at the same time that "the British minister at Rio de Janeiro had been instructed to impress upon the Brazilian government the good policy of doing away with all restrictions and getting rid of all monopolies affecting the commerce of that river." There was, however, a difficulty in the way of both England and France. England did not wish to claim separately the navigation of the Ama-

zon, lest it might be considered by the United States as a precedent with regard to the St. Lawrence, and France was bound by the tenth, eleventh, and twelfth articles of the treaty of Utrecht, by which she had renounced all rights to the navigation of the Amazon, and by which she had even agreed that the inhabitants of Cayenne should be prevented from carrying on commerce in the Marawon, and the mouths of the Amazon.

Mr. Lisboa, the Brazilian envoy, had succeeded in concluding a treaty with New Grenada, similar to that with Peru, and it became Mr. Clay's duty to do what he could to prevent it from being ratified. In Ecuador he had more success, as letters and pamphlets had produced an impression, and on November 26, 1853, that government declared the freedom to all nations of the navigation of the Amazon and of its branches within the territory of Ecuador.

Meanwhile Brazil was very uneasy. On April 4, 1853, Mr. Carvalho Moreira, the Brazilian minister at Washington, made inquiry of Mr. Marcy about rumored expeditions of naval and commercial ships to the Amazon, enclosing newspaper paragraphs on the subject. Mr. Marcy, in his reply of April 20th, seemed to think that the minister's apprehensions had arisen from accounts of the recent scientific expedition on the Amazon, which he explained, and explained also that Lieutenants Herndon and Gibbon

had gone with passports, and under the authority granted by his predecessor, Mr. Macedo. In August the Brazilian minister made further inquiries, and enclosed a newspaper paragraph, saying that Lieutenant Porter of the navy had received two years' leave of absence, for the purpose of taking charge of an expedition intending to force a passage of the mouths of the Amazon. Mr. Marcy, in writing on September 22, 1853, again denied any purpose of using force, and showed, by a letter from the Secretary of the Navy, that Lieutenant Porter had not received any leave of absence. Admitting at the same time that citizens of the United States must have seen the great advantages which the navigation of the Amazon would bring them, he added that he

"Permitted himself to entertain the hope that the Brazilian government, actuated by an enlightened regard for the interests of the empire, will strive by all proper means to develop its vast resources. It appears to the undersigned that no means would be more certain to lead to this result than the removal of unnecessary restrictions upon the navigation of the Amazon, and especially to the passage of vessels of the United States to and from the territories of Bolivia and Peru, by the way of that river and its tributaries. It is hoped that by means of treaty stipulations those advantages may be obtained for citizens of the United States."

Mr. Moreira was still suspicious, and at the end of November sent more newspaper paragraphs and wished more exact instructions to be given to the

Collector of New York to prevent the fitting out of any filibustering expeditions. This Mr. Marcy consented to.

In the instructions which had been given to Mr. Trousdale, who had succeeded Mr. Schenck as minister at Rio de Janeiro, dated August 8, 1853, he was ordered to claim the right of passage, for citizens of the United States, through the Amazon, for legitimate commerce with the republics of Bolivia, Peru, Ecuador, New Grenada, and Venezuela. Mr. Marcy used almost a threat, for he said:

"Should you discover any reluctance on the part of the government of Brazil to yield to this just claim, you will impress upon it the determination of the United States to secure it for their citizens. The President is desirous to cultivate the most amicable relations with that government, and would much regret to have these relations disturbed by its persistence in a policy so much at variance with all the liberal views of civilized and enterprising nations."

An argument was then drawn from natural rights, and especially from the action of the Congress of Vienna in 1815.

So earnest was our Government on this subject that President Pierce, in his annual message of December 5, 1853, said:

"Considering the vast regions of this continent, and the number of states which would be made accessible by the free navigation of the river Amazon, particular attention has been given to this subject. Brazil, through whose territories it passes

into the ocean, has hitherto persisted in a policy so restrictive, in regard to the use of this river, as to obstruct and nearly exclude foreign commercial intercourse with the states which lie upon its tributaries and upper branches. Our minister to that country is instructed to obtain a relaxation of that policy, and to use his efforts to induce the Brazilian government to open to common use, under proper safeguards, this great natural highway for international trade. Several of the South American states are deeply interested in this attempt to secure the free navigation of the Amazon, and it is reasonable to expect their co-operation in the measure. As the advantages of free commercial intercourse among nations are better understood, more liberal views are generally entertained as to the common rights of all to the free use of those means which nature has provided for international communication. To these more liberal and enlightened views it is hoped that Brazil will conform her policy, and remove all unnecessary restrictions upon the free use of a river which traverses so many states and so large a part of the continent."

To return to Peru, we find that in January Mr. Paz-Soldan, the new Minister of Foreign Affairs, whose appointment was considered almost an act of hostility to the United States, had begun to waver on the Amazon question; for the Brazilian minister had declared that, if the decree of April 15th were enforced in its entirety, the treaty with Brazil would be annulled. He had also informed the Peruvian government that the Brazilian minister at Washington had written to him that Mr. Marcy fully sympathized with Brazil in this matter, and was ready to disavow Mr. Clay—a statement which our minister was able to

denounce at once as a falsehood. It having been allowed to the Brazilian steamers to proceed further than Nauta up the river Huallaga, Mr. Clay, on December 31, 1853, had asked if this were true, as he should then claim the same rights for the United States. Mr. Paz-Soldan replied on January 18, 1854, and used specious arguments to prove that the concessions granted to Brazil could not be claimed by the United States, as their treaty referred only to coast and not to river navigation, and as the United States nowhere possessed any part of the banks of the Amazon, they could not offer the same equivalent as Brazil did. This was accompanied by the decree of January 4, 1854, amending the decree of April 15th, and giving rights on the Amazon to Brazilian subjects only, but stating that

"If other states pretend that their subjects and vessels should be admitted to the Amazon and its confluents belonging to the territory of Peru, because they believe they have the right to it by virtue of treaties concluded with the republic, the government will proceed to grant or deny the demands addressed to it, according to the stipulations of existing treaties, or in the manner and under the conditions which may be deemed most fit and convenient."

In explaining this decree, he said that the decree of April 15th had been only administrative, and did not bind Peru to foreign nations except so far as conformable to treaties. Mr. Clay, in his replies of February

4th and February 16th declined any controversy, as our rights were abundantly fixed by treaties, by the decree of April 15th, and by his various conversations with the Minister of Foreign Affairs, and protested energetically on the part of the United States in case it was intended to deprive our citizens of any rights. In reporting his proceedings to his Government, Mr. Clay thought that the United States should use a tone of decision and energetic remonstrance if they wished to maintain their rights. Various other things had occurred at this time, at the Chincha Islands and elsewhere, which were contrary to the treaty, and doubtless a show of force would have brought Peru to reason. Matters, however, remained in this state until July, 1856, when, at a new session of the Peruvian Congress, Mr. Clay persuaded several of the deputies to introduce a bill providing for the freedom of coasts and rivers. Owing partly to the apathy of the overworked Congress and partly through the inopportune arrival of Mr. Lisboa as Brazilian minister (the same who had made a tour three years before inciting the Pacific republics against the United States), this bill did not pass, and matters remained in that state until 1862, when Peru gave notice that the treaty of 1851 should terminate. This treaty, therefore, came to an end on December 9, 1863, and we had no treaty of commerce and navigation with Peru until 1870.

In 1858, however, the United States concluded a treaty with Bolivia which confirmed to us the rights of navigation previously granted by a decree, and article twenty-six said:

"In accordance with fixed principles of international law, Bolivia regards the rivers Amazon and La Plata, with their tributaries, as highways or channels opened by nature for the commerce of all nations. In virtue of which, and desirous of promoting an interchange of productions through these channels, she will permit, and invites, commercial vessels of all descriptions of the United States, and of all other nations of the world, to navigate freely in any part of their courses which pertain to her, ascending those rivers to Bolivian ports, and descending therefrom to the ocean."

If we had had everywhere in South America ministers as competent and energetic as Mr. Clay and Mr. Schenck, we should probably have acquired a commercial influence on that continent, at a time when we had a large commercial marine, before the war, so great that it would still remain to us. Unfortunately Mr. Schenck's successor at Rio de Janeiro, Mr. Trousdale, a very estimable man, who had been governor of Tennessee, was old and crippled with rheumatism, and was by disposition totally unfitted for diplomatic work. His manner of living and his ignorance of the usages of the world made him unfit for society, and he never succeeded in making those social relations which increase the influence of a minister in a large country. In accordance with his in-

structions, Mr. Trousdale represented to Brazil the desire of the United States for the opening of the Amazon; but he was put off from time to time, and finally, after ten months, the Brazilian minister replied that he could not consent to the doctrine proposed by the United States; "it could not prevail unless it were for substituting the principles of interest and force for those of right and justice." He maintained that the principles of the treaty of Vienna did not apply, and had not been recognized even by all of Europe, and that England and France, by their treaties of 1849, had even admitted the navigation of the river Parana to be interior and not international. Subsequent treaties on that subject he took no notice of. He said that the Amazon valley was a desert in Brazil, and in other countries it was still less populated; that no advantages could result to the United States or other country by opening the river. He added: "It is not the intention of the imperial government to keep the Amazon forever closed to foreign transit and foreign commerce. Its opening, however, does not seem to it to be as yet called for."

Notwithstanding this reply Mr. Trousdale proposed a commercial treaty with the Brazilian government in December, 1854. To this proposition he received an answer only in December, 1855. The proposal was politely declined, the minister saying that he supposed

the chief object of it was to open the Amazon. As to that, Brazil preferred to open the Amazon voluntarily to doing so by treaty with any one nation; that the absence of treaties for the northern and western boundaries of Brazil made a delay necessary. Matters remained in this condition until 1866. Our war and the cessation of our treaty with Peru had prevented us from pressing the subject. On December 7, 1866, the Emperor of Brazil issued a decree which opened the Amazon, together with its tributaries the San Francisco and the Tocantins, to the commerce of all the world from and after September 7, 1867. Its tributaries—the Topajos, the Madeira, and Rio Negro —were also opened, but not through the upper part of their course, where only one bank belonged to the Brazilian empire.

But at this time our foreign commerce and our carrying trade had been ruined by the war and our absurd shipping laws, and the decree announcing the opening of the Amazon, in which Mr. Marcy and Mr. Randolph Clay were so deeply interested, was apparently received by Mr. Seward with as little emotion as if it had notified him of the dissolution of Parliament, or some other object of purely Brazilian concern.

Peru again followed the example of Brazil, and on December 17, 1868, President Josê Balta decreed that "the navigation of all the rivers of the Republic

is open to merchant vessels, whatever be their nationality." *

* Collection of Peruvian Treaties, Lima, 1876, p. 115. The facts in the above sketch have been taken from the original manuscript despatches in the State Department. The papers on this subject have never been officially published, but extracts are given by Mr. Lawrence in his notes to Wheaton, edition of 1863, pp. 363–365. The notes between Mr. Clay and the Peruvian ministers are printed in the collection of Oviédo, vii., pp. 108–134.

H.—EUROPEAN RIVERS.

The Scheldt.—French Efforts for Free Navigation.—Treaties of Paris and Vienna.—The Rhine.—The Scheldt.—The Elbe.—The Danube.—Congress of Paris.—Riparian Commission.—The European Commission.—Treaties of 1871 and 1878.—Proposed Mixed Commission.—Roumanian Objections.—The Barrère Proposal.—Course of Russia.—Conference of London of 1883.—Results.

It is necessary to state in a few words the course which the question of free navigation has taken in Europe. The first dispute on this subject related to the Scheldt. By the treaties of Westphalia, by which the United Provinces of the Netherlands were declared independent, the mouths of the Scheldt were closed on the frontier between Holland and the Catholic provinces, although the commerce of these provinces, now Belgium, naturally went through them. After the Spanish provinces were ceded to Austria by the treaty of Utrecht (1713), they were submitted to a military servitude in favor of the United Provinces. The Barrier treaty, signed between Austria, Great Britain, and Holland, November 15, 1715, even stipulated that several cities should receive a Dutch garrison. In 1773, Joseph II. declared the Barrier treaty to be no longer necessary, and in 1784, with the idea of disembarrassing Belgium of commercial dependence on Holland, brought

up some old claims against that country. These claims were denied by the States-General, and the Emperor, who could not see one of the finest rivers of the world shut to commerce, and his subjects deprived by policy of the advantages that nature had given them, declared that he would abandon all his claims if the United Provinces would consent to the navigation of the Scheldt by his subjects. The intervention of Great Britain and France was then asked for, and by the the treaty of Fontainebleau, November 8, 1785, the treaties of Westphalia were confirmed, the Barrier treaty annulled, but the Scheldt continued to be closed for the Belgic provinces from Saftingen to the sea.

Very soon after this came the French Revolution, and the Republic overturned everything in its power, as far as possible, that it considered contrary to its interests. By a decree of the Executive Council, November 20, 1792, it opened the navigation of the Scheldt and the Meuse, and proclaimed the principle that one nation cannot without injustice claim the right of occupying exclusively the channel of a river, and of preventing neighboring peoples who live on its upper banks from enjoying the same advantage. On May 16, 1795, a treaty between the French and Batavian governments declared the navigation of the Rhine, the Meuse, the Scheldt, and the Hondt, and all their branches to the sea, to be free to the two na-

tions, the French and the Batavian. At the Congress of Rastadt, in 1798, France demanded not only the free navigation of the Rhine but of its branches, and expressed the hope of seeing these principles adopted on all the great German rivers, and especially on the Danube, on account of the immense benefit which results from free navigation. It was, however, by the treaty of Luneville, February 9, 1801, that the French demands were granted. A convention between Germany and France, for the tolls on the navigation of the Rhine, was signed on August 15, 1804. Similar principles were afterward adopted for the Vistula, the Elbe, and other rivers.

Notwithstanding the fact that the principle of free navigation was one contended for by the French Republic, yet the five great powers, in the treaty of Paris of May 30, 1814, inserted an article on this subject:

"The navigation of the Rhine, from the point where it becomes navigable to the sea, and reciprocally, shall be free in such a way that it cannot be forbidden to anybody; and the future Congress shall consider the principles according to which the duties levied by the riparian states can be regulated in a manner most equal and most favorable to the commerce of all nations."

It was agreed, also, that the Congress should consider how the same dispositions could be extended to all other rivers which in their navigable course separate or traverse different states.

The Congress of Vienna did not, however, realize the project of perfect freedom of navigation which had been entrusted to it. A commission was constituted to draw up a plan, composed chiefly of the delegates of the riparian states, though Lord Clancarty sat as English delegate, showing that the commission had an international footing. The French project, which was the basis of discussion, was very simple, saying, "the Rhine shall be considered as a river common to the riparian states, and its navigation shall be entirely free and cannot be forbidden to anybody." Lord Clancarty proposed some slight changes, accentuating the fact of the freedom of the Rhine to everybody; but Baron William Humboldt, on the part of Prussia, proposed, two weeks later, another draft which read: "The navigation of the Rhine shall be entirely free, and cannot, in regard to commerce, be forbidden to anybody." These words "in regard to commerce" seemed somewhat suspicious to Lord Clancarty, but he was outvoted, and the commission held, quite contrary to the original project, that the Congress of 1814 had only intended to throw open the Rhine to the riparian states, and not to all nations who had nothing to offer in return. This was bad: but worse was to follow. Humboldt's draft, as accepted by the Congress of Vienna, read, "that the navigation of the Rhine was free to the sea." Holland claimed that "to the sea" did not mean "into the sea," and that

therefore at the highest limit of tide-water she could place barriers and tolls. This question had to be taken up by the Congress at Verona, in 1822, and the five powers signed a protocol by which they declared that they were authorized "to concur in the execution of the dispositions of the act of the Congress of Vienna relating to the navigation of the Rhine." Holland still delayed conforming to them, and on February 14, 1826, Prince Metternich was obliged to say in a note "that the freedom of the navigation of the Rhine into the sea is an express condition of the existence of the kingdom of the Netherlands, and that the international law of Europe demands his Majesty the King to subordinate his sovereignty to the conditions established by the treaties." It was not, however, until 1831 that the Convention for the Regulation and Navigation of the Rhine was signed, by which, in spite of the general principles of the treaty of 1814, the navigation of the Rhine can only be exercised by known subjects of the riparian states. Even the navigation from the sea and to the sea is reserved to those, to the exclusion of non-riparian states.

The question of the navigation of the Scheldt was never entirely arranged until the treaty of 1839, and the separation of the respective territories of Belgium and the Netherlands. This convention still allowed the existence, for the profit of Holland, of certain

taxes or tolls on navigation. These, however, were abolished by the treaty concluded May 12, 1863, between Belgium and Holland, by which, for the sum of 17,140,640 florins, Holland renounced all rights of toll on the river. By the protocol of July 15, 1863, Belgium arranged with the European powers that each should pay its share of this sum; and the United States, by a separate convention of May 20, 1863, and a treaty of July 20, 1863, agreed to pay its proportion, which was 2,779,200 francs, in ten annual instalments, with interest at four per cent. This sum was finally paid in 1873, having amounted in all to $606,202.67.

In the treaty signed at Vienna between Prussia and Saxony, May 18, 1815, it was stipulated that the general principles stated by the Congress should be applied to the Elbe as soon as possible. Plenipotentiaries were appointed by the ten riparian states, but it was only in June, 1821, that an act of navigation was signed which gave the rights of navigation only to the riparian states. Owing in great measure to the free city of Hamburg, assisted by both Hanover and Mecklenburg, an additional act, in the year 1844, granted greater freedom in allowing the ships of all nations to transport persons and merchandise from the North Sea to the ports of the Elbe, and *vice versa*, the internal navigation being still reserved for the riparian States.

Another question arose with regard to the Elbe—

that of the tolls at Stade, which were levied by the government of Hanover on all ships descending or ascending the river. The Hanoverian government was deaf to all appeals, claiming that the tolls at Stade were sea tolls and not river tolls. Finally, England refused to renew its treaty of 1844 on that subject, Holland and Belgium followed its example, and the United States had always refused to recognize the right of Hanover to impose these duties. We had succeeded by our treaty of 1846 in obtaining that no higher or other toll should be levied at Brunshausen or Stade, on the Elbe, on the tonnage of cargoes of vessels of the United States, and no other charges or inconveniences other, than were levied on the vessels of Hanover. In 1861 the question returned, and, by the treaty of June 26th, most maritime states agreed to pay an indemnity to Hanover of 2,857,338⅔ thalers, in consideration of the total abolition of the Stade dues. We agreed by our treaty of November 6, 1861, to pay our quota, amounting to 60,353 thalers, on consideration that the dues should be abolished forever; that no charge of any kind should be imposed in compensation thereof; and that the works necessary for the free navigation of the Elbe should be maintained as before by the government of Hanover.

The treaty of July 3, 1849, for the navigation of the Po was far more liberal than any preceding treaties, in allowing navigation to be free to all nations.

That question has, however, been put entirely aside by all the banks of the Po being now absorbed into the kingdom of Italy.

However little these various conventions for the free navigation of rivers conformed to the ideas of the treaty of 1814, yet one thing was gained—that a river flowing along or through two or more states was looked upon as being the common property of them, over which no one had a right to exercise authority to the exclusion of the others.

It has often been claimed as one of the merits of the Congress of Paris of 1856, that it extended the principle of the free navigation of rivers to the Danube. The freedom there proclaimed has been restricted in ways which are interesting to study. Here the principle, which we proclaimed a century ago, that states lying on the upper course of a river had a right to navigate the lower course, is so stretched as to imply that such states have a right to *control* the navigation.

The freedom of navigation on the Danube had been recognized by Austria and Turkey by the treaty of Passarowitz in 1784. Russia in 1812 gained a footing on the river, which was increased to such an extent that at last she had in her possession all the mouths of the Danube; and although by the treaty with Austria in 1840 it had been agreed not to impose tolls on navigation, there were vexations from qua-

rantines which amounted to about the same thing. An English vessel in 1853 was obliged to remain sixty-five days at Galatz; and although Odessa and Galatz were at about the same distance from Constantinople, the freight to Galatz was twenty-two francs higher than to Odessa. England and Austria protested against this state of things, for the mouths of the Danube had been allowed to fill up; but they were unable to do anything until 1854, when, on the outbreak of the Crimean War, the re-establishment of free navigation was recognized as indispensable. This question was always brought up at the various negotiations for peace; and finally, in 1856 it was agreed, by Articles 15 to 19 of the treaty of Paris, to apply the principles of the Congress of Vienna to the Danube and its mouths; and it was declared "that this arrangement henceforth forms a part of the public law of Europe, and is taken under its guaranty." No toll was to be founded solely on the navigation of the river, nor any duty placed on the goods which may be on board the vessels. Regulations of police and quarantine were to be arranged so as to facilitate the passage of vessels. With the exception of such regulations, no obstacle whatever shall be opposed to their navigation. A European Commission, in which the signatory powers were to be represented each by one delegate, was to be charged with executing the necessary works for clearing the mouths of the

Danube. A Riparian Commission, which was intended to be permanent, was to prepare the regulations for navigation and river police, to remove the impediments, of whatever nature they might be, still preventing the application to the Danube of the arrangements of Vienna, to execute necessary works throughout the whole course of the river, and, after the dissolution of the European Commission, to maintain the mouth of the Danube and the neighboring parts of the sea in a navigable state.

The difficulties after this came not from Russia, but from Austria, which had, during the whole course of the deliberations, attempted to restrict the free navigation of the river to the riparian states solely. Under the guidance of Austria regulations were drawn up by the Riparian Commission, which were presented to the conference of Paris in 1858, with the claim that all that the conference had a right to exact was to acknowledge their receipt, upon which they would immediately be put into vigor. These regulations, however, had been drawn up in a manner entirely contrary to the spirit of the treaty of Paris, with the intention of reserving, as far as possible, all rights on the river to the riparian states, and especially to the Austrian steamer companies, which had a monopoly of the navigation, and in which various high personages in Austria were said to be interested. An attempt was made to introduce a distinction between internal

navigation from port to port, and the navigation between any part of the river and the sea, the latter only being free to all nations. The articles on agents, licenses, etc., were all drawn up so as to maintain the monopoly of the riparian states. The transit of any article prohibited by the tariff of any country was forbidden contrary to the stipulations of the treaty; and also in a like way the riparian states were given power to levy taxes and tolls for the purposes of paying the expenses of keeping the river navigable. Lord Cowley, the English plenipotentiary, protested; and the representatives of France, Prussia, Russia, and Sardinia fully agreed with him. Turkey refused to apply the regulations for navigation, on the ground that they had not been approved by Europe, and therefore the whole project of Austria fell to the ground. The representatives of the powers at the same time refused to put an end to the European Commission because the works for clearing the mouths of the Danube had not yet been finished. The European Commission proved so successful that when a subsequent conference met at Paris in 1856 it was retained. Particular attention had been given to the Sulina mouth; and here the works executed by Sir Charles Hartley had deepened the channel of the river from seven feet in 1856 to seventeen and a half feet in 1863. In five years the shipwrecks in passing the mouths of the Danube had been 0.81 per cent. of the total number

of vessels; whereas after 1860 they were reduced to 0.21 per cent., and the commerce had greatly increased.

Up to 1871, therefore, there were three different regulations applied to the Danube: From Isaktcha to the mouth those of the European Commission; from Orsova up to Iller, the head of navigation, the regulations established by Austria, and the riparian German states; only the intermediate part, from Orsova to Isaktcha was under the same want of regulation as before the treaty of Paris; for Turkey, which was a riparian state for this whole portion, had refused to put the regulations into force.

When Russia, on October 31, 1870, declared that she could no longer consider herself bound by the obligations of the treaty of Paris, as far as they restricted her rights of sovereignty in the Black Sea, Austria saw that she should gain more by the continuance of the European Commission, and that the question of the Danube was nearly allied to that of the Black Sea. By the treaty of London of 1871 it was agreed to continue the duration of the European Commission for twelve years—that is, until April 24, 1883, and the riparian powers were allowed to levy tolls for the removal of obstructions at the Iron Gates.

By the treaty of Berlin of 1878, which followed the Russian-Turkish War, another change was made with regard to the Danube. Bessarabia, which had been

taken away by the peace of Paris, after the Crimean War, was retroceded to Russia; and Russia therefore became riparian on the Kilia mouth of the Danube, the most northern of the three chief mouths, and formerly considered the best. By this treaty, in order to preserve the freedom of the Danube, all the fortifications and forts from the Iron Gates to the mouth were ordered to be razed, and no new ones could be erected. No vessel of war was allowed to navigate the Danube below the Iron Gates, with the exception of those of the river police and customs. Despatch-boats of the great powers, generally stationed at the mouth of the Danube, were allowed to ascend the Danube as high as Galatz. The powers of the European Commission were extended from Isaktcha to Galatz, nearly fifty miles further. Austria-Hungary then desired the permanent continuance of the European Commission, but objections were made by Russia; and, without finally deciding the matter, the treaty merely stipulated that an agreement of some kind should be made one year before the expiration of the powers of the Commission. It was, however, arranged that regulations respecting navigation, river police, and supervision, from Galatz up to the Iron Gates, should be drawn up by the European Commission, assisted by delegates of the riparian states, and put in harmony with the regulations made for that portion of the river below Galatz.

The general Riparian Commission provided for by the treaty of Paris was tacitly allowed to become extinct; and the works for removing the cataracts at the Iron Gates were transferred from the riparian powers to Austria-Hungary. Such was the haste to conclude the treaty of Berlin, that nothing was provided for the execution of the regulations for the Middle Danube, the propositions both of the Austrian and the Russian plenipotentiaries having been rejected. Article 55 spoke only of the preparation of the regulations. The European Commission of the Danube met, and after a long discussion decided, in spite of the opposition of Roumania, which by the treaty of Berlin had been allowed to have a member of the European Commission, to bring in a preliminary draft of regulations. These provided that a so-called Mixed Commission should be appointed, composed of delegates of the riparian states, and also of a delegate of Austria-Hungary, which latter should have the presidency and a casting vote. In this way Austria-Hungary, without being a riparian power for this portion of the river, would be able to decide all questions with regard to the navigation of the Danube, and would have the predominance on the river below the Iron Gates, at the expense of the riparian powers and perhaps also of the general interests of the world. This preliminary draft met with such objections that it had to be abandoned.

After some very stormy sessions and long discussions the French delegate, Mr. Barrère, afterward the French representative in Egypt, proposed as a solution that not only Austria-Hungary should sit in the Mixed Commission with the delegates of the riparian states, and should have the presidency, but also that there should be present a delegate from the European Commission, appointed for six months in regular alphabetical order. The Mixed Commission, being thus raised from four to five members, there would be no necessity for a casting vote. Another advantage was that there would thus be a connection established between the Mixed Commission and the European Commission, which would imply some sort of a control by Europe. The difficulties were, that, owing to the alphabetical arrangement, the names of the powers being in French (the language generally adopted in diplomatic acts) Austria and Germany would have the first two representatives from the European Commission; and it would naturally be during the first year that the regulations for the Mixed Commission would be made. As Germany was acting in concert with Austria, this was really equivalent to giving Austria two votes, although, strictly speaking, Austria was not a riparian power, but simply a power holding a portion of the upper waters of the river, and therefore having a great interest in the regulations for the navigation of the lower portion. Roumania,

in its turn, would have had two delegates; but its turn would have been the last, and it then would have been difficult to have changed the regulations previously adopted. Roumania absolutely refused to accept the proposition of Barrère, yet, in spite of this opposition, and of the rule which demanded that all of the decisions of the European Commission should be taken unanimously, it was decided to report the result to the powers. This resolution was signed on June 2, 1882. The powers of the European Commission expired in less than a year. All countries, but especially England, which had sixty-seven per cent. of the total navigation of the mouths of the river, were greatly interested in the result; and in consequence of negotiations Lord Granville proposed a conference at London for the purpose of settling the dispute.

An additional difficulty was raised by Russia, who proposed to withdraw from the control of the European Commission that part of the northern mouths of the Danube under its exclusive jurisdiction, including the mouth of Otchakof, which had formerly been the chief mouth. Russia proposed not only to prevent the officers of the European Commission from visiting the mouths which she exclusively controlled, but to execute works which, if successful, it was urged by others, would perhaps divert the whole of the commerce from the Sulina mouth of the Danube, the only one which so far had been improved, and thus render

the European Commission of no account. These fears seem to be groundless; but there were other political considerations, of which it is enough to mention that by the possession of these months exclusively, Russia could prepare vessels and munitions there, enabling her at any time to sail up the Danube in case of a future war in that region. The conference of London met in February, 1883. Austria refused to assent to the prolongation of the European Commission, unless the Mixed Commission, in conformity with the principles of the Barrère amendment—which was the last concession that she would make—were accepted. Russia demanded, for the sake of the liberty of the Danube, the exemption of her mouths from European control; and Great Britain, in order to save something for her large commerce, agreed to yield to both. Roumania had a natural title to be present at this conference, not only as a riparian power of the Danube, but also as having a delegate in the European Commission. But her representatives, as well as those of Serbia and Bulgaria, were excluded. In spite of her protests, the conference accepted in principle the Mixed Commission, and the powers even ratified the treaty, although it was evident that it could not be enforced without the consent of Roumania, a riparian power. It could not be expected that the powers would resort to force to impose measures which had been absolutely rejected by

the chief riparian power; for at least one-third of the navigable distance of the Danube had one bank belonging to Roumania. In spite of the Austrian representation, the conference refused to make its decisions executory. Although ratified, the decisions of the conference, as far as Roumania was concerned, remained in abeyance. Russia is the only power which has attained anything, for it was agreed that the Russian mouths of the Danube should be exempted from the operation of the European Commission. By the convention of London the powers of the European Commission were extended from three years to three years, unless denounced by one of the signatory powers; and the powers of the Commission were extended up the river as far as Braila.

To these measures Roumania made no objection. The question of the free navigation of rivers had reached a singular phase. The states in possession of the mouths and the lower portion of the Danube were in favor of free navigation, while the power holding the upper portion of the river was desirous of restricting the navigation of the lower portion in its own interests and in the interests of monopolies created by it.

The result is that, at the present time, there are eight different systems of regulation for the Danube, instead of one for the whole river, which was pro-

vided for by the treaty of Paris of 1856. We have, according to the convention of London,

First, The regime of Würtemberg and Bavaria, for the highest portion of the river.

Second, That of Austria-Hungary.

Third, That of Serbia.

Fourth, That of the Iron Gates, which is confided to Austria-Hungary.

Fifth, That of the Mixed Commission, from the Iron Gates to Braila.

Sixth, That of the European Commission.

Seventh, That of Russia and Roumania, on the Kilia branch.

Eighth, That of Russia on the Otchakof mouth.*

* See Etienne Carathédory, *Du droit international concernant les grands cours d'eau*, Leipzig, 1861 ; E. Engelhardt, *Du régime conventionnel des fleuves internationaux*, Paris, 1879 ; von Holtzendorff, *Rumäniens Uferrechte an der Donau*, Leipzig, 1883 ; F. Heinrich Geffcken, *La question du Danube*, Berlin, 1883 ; F. von Martens, *Völkerrecht ;* the protocols of the European Commission and of the London Conference.

I.—THE CONGO AND THE NIGER.

VERY recently the principles of free navigation have been extended to two great rivers of the African continent. Mr. Henry M. Stanley, under the patronage of the King of Belgium, had for some years been exploring the valley of the Congo for the purpose of ascertaining its capabilities for trade. It was generally understood that this region was soon to be opened freely to the trade of the world, when the governments of England and Portugal, both jealous of any interference with their rights on the west coast of Africa, made the treaty of February 26, 1884, by which that portion of the southwest African coast between south latitude 5° 12′ and 5° 18′ was recognized as Portuguese. This gave the mouth of the river Congo to Portugal, and cut off the domain of the International African Association from the sea. France, which claimed some rights to the Congo valley, in consequence of the explorations of Monsieur De Brazza, and of the treaties made by him with various African chiefs, immediately protested; so also did Germany and the United States, on more general principles. The subject was brought to the attention of Congress, and by a resolution of the Senate of April 10, 1884, the President was

authorized to recognize the International African Association. This was done by proclamation. In consequence of the disputes to which the Anglo-Portuguese treaty gave rise—which, it must be said, was thoroughly disapproved of in the commercial centres of England—Germany finally called a conference of the chief commercial and maritime states, which met at Berlin on November 15, 1884. In this congress there were representatives of Germany, Austria, Belgium, Denmark, Spain, the United States, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, and Turkey. Turkey was admitted, because, on the basis of his rights as Caliph, the Sultan claimed some indefinite spiritual jurisdiction over the Mussulmans in the interior of Africa. After long discussion, a treaty having been objected to, a general act was agreed upon, and signed on February 26, 1885, which established the Free State of the Congo, into which the African International Association was merged, and granted, first, freedom of trade in the basin of the Congo, its mouths, and certain adjacent districts; second, the free navigation of the river Congo, in all its mouths and branches, to be exercised under the supervision of an international commission, on the principles set forth by the Congress of Vienna of 1815, and the treaties of Paris of 1856, of Berlin of 1878, and of London of 1871 and 1883; and, third, the free navigation of the river Niger and its branches,

without prejudice to the rights of England and France, who agreed to carry out the treaty in the waters under their jurisdiction.

President Cleveland, in his message of December 8, 1885, refused to ask the Senate to approve of this general act, on the ground that "an engagement to share in the obligation of enforcing neutrality in the remote valley of the Congo would be an alliance whose responsibilities we are not in a position to assume." Mr. J. A. Kasson, one of the delegates of the United States to the conference, in an article in the *North American Review* for February, 1886, seems to show that this action is based on a misunderstanding of the provision of the act. Indeed, there is nothing whatever expressed in that document about "enforcing" neutrality. The powers have agreed only to "respect the neutrality of the territory."*

So far as the free navigation of the Congo and the Niger are concerned, it makes little difference to us whether we ratify the act or not. These rivers are open to the whole world. The only detrimental result is that we can take no share in preparing or executing the regulations governing such free navigation. We lose an opportunity of doing a service to our future commerce with Africa.

* See the full text of the General Act, and especially Chapter III., which is printed in Mr. H. M. Stanley's last book on the Congo.

VII.

NEUTRAL RIGHTS.

Subjection of Neutrals.—Our Treaty with France of 1778.—Armed Neutrality of 1780.—Its Origin.—Our Treaties with the Netherlands, Sweden, and Prussia.—Franklin's Ideas.—John Quincy Adams and the Renewal of the Prussian Treaty.—Our Negotiations of 1823 to Preserve Private Property from Capture at Sea.—Letters of Marque.—Privateering.—Declarations of 1854.—Our Reply.—Treaty with Russia.—President Pierce's Message.—Declaration of Paris of 1856.—The Marcy Amendment.—Opinions of other Powers.—English Opposition.—Cessation of Negotiations under President Buchanan.—Proposal of Mr. Seward.—Its Rejection.—European Wars.—Our Treaty with Italy of 1871.

AFTER having explained to a limited extent the efforts of the United States to secure the freedom of navigation and commerce in time of peace, it is necessary to mention briefly what they have attempted to do for the freedom of commerce and navigation in time of war.

At the outbreak of the American Revolution the commerce of the world was governed, or rather misgoverned, by a system of arbitrary and contradictory rules imposed by the great maritime powers, especially

Great Britain, all tending one way, to the effacement and abolition of all rights of small neutral states when the larger powers were at war with each other. According to the rules of English fair-play the ring was to be cleared, and outsiders were allowed to communicate with each other only under severe pains and penalties. The world was to stand still, and starve, it might be, whenever England fought.

In the very first commercial treaty made by the United States, that with France of February 6, 1778, signed on the same day with the treaty of alliance, we adopted the more liberal maxim, already proclaimed by France, that "free ships make free goods." It was agreed also that so far as France and the United States were concerned, either nation should be allowed to trade with one at war with the other without danger of capture, and, therefore, that the ships of either of these two countries could carry the property belonging to enemies without risk; that free ships shall also give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board of the ships, although the whole lading or any part thereof should pertain to the enemies of either, contraband goods being always excepted. The definition of contraband goods was also laid down as being solely munitions of war. Merchandise which had in some instances by some countries been prohibited, such as cloths, manufactured

articles, gold and silver, metals, tobacco, fish, grain, and other provisions, and even cotton, hemp, flax, tar, pitch, ropes, cables and sails, and materials for making ships, were not to be regarded as contraband.

This treaty preceded, but not by a long time, the declaration of the northern powers of Europe as to the rights of neutral trade, which is generally spoken of under the name of the "Armed Neutrality."

The first idea of the armed neutrality is now admitted to have belonged to Russia, but for a long time it was ascribed by many writers to Frederick the Great, and the French Abbé Denina, in his biography of Frederick the Second, affirmed that even in 1744 Frederick had dreamed of a confederation of this sort. Catherine II., on reading the book of Denina, wrote opposite that passage: "This is untrue. The idea of the armed neutrality arose in the brain of Catherine II. and of no one else. Count Bezborodko can bear witness that this thought was expressed by the Empress very unexpectedly. Count Panin did not wish to hear about an armed neutrality. This idea did not belong to him, and it took much labor to convince him, so that it was confided to Bakunin, who carried out this business."*

Wheaton, and most writers on international law who have succeeded him, have followed the version given by Baron von Goertz in a little pamphlet which

* Diary of A. V. Khrapovitzky, p. 475.

he published, first anonymously, and then under his own name,* in which he gave the credit of the armed neutrality to Count Panin as a means of counteracting the efforts of the English minister, Mr. James Harris, afterward Earl of Malmesbury, who was endeavoring to gain the Empress to take the side of England. Goertz was in some respects a clever man, but he signally failed in all his missions, and his pamphlet was written, or at least published, after the death of most of the parties concerned. His motives may be guessed at, but it is not worth our while to consider them. Since that time not only has the correspondence of Lord Malmesbury been published, but the history of the armed neutrality, from the Russian point of view, supported by a complete series of documents, has also been given to light.† We find from these papers not only that Goertz is entirely wrong as to the way in which the armed neutrality arose, but even as to its date.‡ Although the final declaration was

* *Mémoire ou précis historique sur la neutralité armée et son origine.* Bâle, 1795 and 1801.

† See the Russian Nautical Magazine (*Morskoi Sbornik*), 1859, Nos. 9, 10, 11, 12.

‡ Professor Carl Bergbohm, of Dorpat, in his very interesting and instructive work, *Die bewaffnete Neutralität* (Berlin, 1884), attempts to uphold the exact truth of the version of Goertz. The question is not of great interest, except to students of Russian or of diplomatic history; but the book of Bergbohm seems an attempt to support a paradoxical theory, simply as an exercise of dialectic power, like many other German theses of the present day.

dated in 1780, yet preliminary steps were taken and were known to the cabinets of Europe as early as December, 1778.

In 1778 a number of American privateers appeared in the northern ocean and did considerable injury to trade carried on by foreign merchants with the Russian port of Archangel. The Empress Catherine, desiring to protect her commerce, resolved in the subsequent summer to enter into negotiations with the courts of Denmark and Sweden for taking protective measures in common. Count Panin, the Minister of Foreign Affairs, to whom the matter was referred, reported that the peculiarity of the trade was such that the only harm caused to Russia was by the capture of vessels sailing for Archangel. If they were taken, the goods might wait for a whole year for a foreign purchaser; but, once the goods having been bought and despatched to a foreign port, it made no difference to Russia whether the English or the Americans profited by them. The Empress decided to send three or four ships and a frigate to protect the foreign trade going to Archangel, without distinction, and orders were given to advise the English, French, and American cruisers to leave those waters, as they would not be allowed to carry on their trade near the Russian coasts. Any actual attack on a merchant vessel might be repelled by force. Denmark and Sweden were asked to send to sea similar armed squadrons to

act in connection with Russia. Count Bernstorff, the Danish minister, replied that Denmark was so bound by treaties that it would be difficult for them to co-operate with Russia, as it would be a breach of their neutrality, for the whole advantage would be given to English ships. They were willing, however, to protect foreign commercial marine, but owing to having distant colonies it was necessary to be careful about the steps taken. Sweden, to which the same proposition was made in February, 1779, agreed to them; but proposed at the same time taking broader measures for protecting neutral navigation even in the more distant seas. Russia actually sent, in 1779, into the northern ocean, for the protection of trading vessels, four ships and two frigates. The whole year, however, passed in these negotiations, which led to no decisive result.

The capture, however, of two ships laden with Russian wares—one Dutch and the other Russian—by Spanish cruisers, in the beginning of 1780, and their condemnation and sale in Cadiz, as being probably bound for Gibraltar, made the Empress so angry that in the representations to the Spanish government, conveyed both by the Russian minister at Madrid, and the Spanish minister at St. Petersburg, she demanded that all neutral ships carrying Russian goods should be free from capture, and that compensation should be made for those which had already

been taken. At the same time an order was given to fit out, for readiness at the opening of navigation, two ships and two frigates, destined for the northern ocean as before, and fifteen other ships for any destination which might be given them. The Empress ordered Count Panin to say in reply to questions, that this squadron was fitted out for the defence of the Russian flag, and that the Empress proposed to send them wherever the honor, profit, and need of the country demanded. On February 27, 1780, the Russian government sent to the courts of London, Versailles, and Madrid, the well-known declaration about neutral rights, the points of which were, first, that neutral ships can freely go from port to port, and on the coasts of the nations at war; second, that property belonging to the subjects of the powers at war is free on neutral vessels, with the exception of contraband; third, that only arms and ammunition are recognized as contraband; fourth, that blockades must be effective; and fifth, that nothing but contraband can make a lawful prize.

Formal propositions were then made to Denmark, Sweden, Portugal, and the Netherlands, for taking similar measures and concluding conventions for that purpose. France and Spain replied to the Russian declaration by the assurance of their readiness to respect neutral rights. Spain excused her action toward the Russian ships on the ground of the at-

tempts made to enter Gibraltar, and by English examples, but promised to make indemnity. England replied negatively that she had always considered it her duty to give due respect to the Russian flag, and assured the Empress that the navigation of her subjects would never be interrupted or stopped by British vessels.

The negotiations with the neutral powers resulted in a convention between Russia and Denmark on July 9, 1780, and with Spain, on August 1st of the same year, agreeing to the doctrine already laid down in the Russian declaration. The Netherlands agreed to the same principle at the end of December. Prussia, Austria, Portugal, and the Two Sicilies all accepted it within the two years following. The United States, by a resolution of Congress dated October 5, 1780, gave its adherence to the principle claimed by the armed neutrality, and offered to join the northern league. Mr. Adams communicated this action of Congress to the Dutch government, as well as to the ministers of Russia, Sweden, and Denmark, in March, 1781; but as none of these governments were yet prepared to recognize the United States, no further action was taken.

In the treaty with the Netherlands, in 1782, the provisions for guaranteeing neutral rights were practically the same as those in the treaty of 1778 with France, that is, that free ships made free goods, and

that goods found in an enemy's ship would be liable to be confiscated, unless put on board before declaration of war or within six months thereafter. The definition of contraband goods was perfected.

By the treaty with Sweden of 1783—the first power which voluntarily offered its friendship to the United States—the same provisions were repeated. A similar treaty would have been made with Denmark, had not, under the pressure of England, Denmark captured some American vessels engaged in trade prohibited by England.

The treaty with Prussia in 1785 introduced some entirely new principles. It was negotiated under the influence of Dr. Franklin and of King Frederick the Great, and it has been often said that, owing to the slight probability that Prussia and the United States should be brought into conflict, the philanthropic provisions inserted in it were merely such declarations as speculative theorists might safely indulge in. Dr. Franklin, however, had already attempted to insert similar provisions in the treaty of peace with Great Britain in 1783. The English negotiators at that time refused to discuss the question of maritime rights. By this treaty with Prussia free ships made absolutely free goods, and no goods were to be regarded as contraband so as to justify confiscation, although the vessels carrying contraband goods could be retained until the contraband goods were taken

out, and in that case such contraband goods being military stores could be used by the captors if the current price were paid for them. Blockades of all kinds were practically abolished, for merchant and trading vessels were to be allowed to pass free and unmolested, and privateering was entirely abolished as between the two countries. Dr. Franklin had already written on March 14, 1785 :

"It is high time, for the sake of humanity, that a stop were put to this enormity. The United States of America, though better situated than any European power to make profit by privateering, are, as far as in them lies, endeavoring to abolish the practice by offering in all their treaties with other powers an article engaging solemnly that in case of future war no privateer shall be commissioned on either side, and that all marine ships on both sides shall proceed on their voyages unmolested. This will be a happy improvement of the law of nations. The humane and the just cannot but wish general success to the proposition."

In making the treaty of 1794 with England, commonly known as Jay's treaty, the United States were obliged from imperative reasons (this seemed the only course possible to prevent a war) to retrace their steps and to admit, as far as England was concerned, certain principles of maritime law which they had always opposed. It was expressly agreed that the flag did not cover the merchandise,—the only treaty signed by the United States in which this acknowledgment can be found. Ship timber, tar, hemp, sails, and copper

were declared contraband, although they had been made free in the other treaties concluded at that time by the United States. Provisions also were declared contraband. There was no definition of the right of search and blockade, but both were acknowledged in general terms.

The treaty with Prussia expired by its own limitation in 1796, and Mr. John Quincy Adams was sent to Berlin for its renewal. Mr. Adams, although still a young man of only thirty-two years of age, had begun public life as secretary to Mr. Dana, our commissioner to St. Petersburg, and had recently been minister to The Hague. He had been appointed to Lisbon, but was finally transferred to Berlin for the purpose of this special negotiation. Subsequently minister at St. Petersburg, then at London, afterward Secretary of State for eight years, and finally President, he was an excellent example of the advantage of diplomatic training. His instructions at Berlin were to negotiate a treaty which was in opposition not only to his own personal views, but to those which the United States had previously expressed, and have subsequently insisted upon. He, however, took up the matter as a lawyer would a brief, and succeeded in satisfying our Government. He was aided in some respects by the opportune death of the King of Prussia, which left him several months without credentials for the new sovereign, and therefore without power for negotiating,

a circumstance which enabled him to make acquaintances extremely useful to him.

The position of the United States had been complicated not only by the treaty of 1794 with Great Britain, but by the action of England and France in the war. The principles of "free ships, free goods," which we had recognized in all our treaties and desired to become universal, we found to be of no avail so long as it was not universally recognized by maritime nations. In fact it had been observed by other powers only when it would operate to the detriment of the United States, and not to our benefit. Mr. Adams was therefore instructed to propose the abandonment of this article. The Prussian negotiators objected to giving it up entirely, on the ground of the confusion which it would cause in the commercial speculations of nations, and the rejection of claims prosecuted by them in the admiralty courts of France and Great Britain, relating to the captures and collisions with the northern powers, which were sustaining this principle at that very moment by armed convoys, and proposed a qualification. After a long discussion, in which Mr. Adams fully carried out the views of our Government, a treaty was agreed upon with the following article:

"Experience having proved that the principles adopted in the twelfth article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected

during the last two wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree, either separately between themselves, or jointly with other powers alike interested, to concert, with the great maritime powers of Europe, such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars."

After it was approved, by the wish of the United States to prove it had no desire to part from the principles of the treaty of 1785, there was added:

"If in the interval either of the contracting parties should be engaged in a war to which the other should remain neutral, the ships of war and privateers of the belligerent power shall conduct themselves toward the merchant vessels of the neutral power as favorably as the course of war then existing may permit, observing the principles and rules of the law of nations generally acknowledged."

The treaty of 1799 itself expired in ten years, and the twelfth article of the original treaty of 1785 was again revived by a treaty which was concluded between the United States and Prussia in 1828, both parties engaging to treat at some future and convenient period, either between themselves or in concert with other maritime powers, for insuring just protection and freedom to neutral navigation and commerce, and which may, at the same time, advance the cause of civilization and humanity.

For various reasons it is inconvenient here to speak of the impressment of seamen on board of American

ships, and of the infringement of neutral rights by the orders in council and by the French decrees, which led to the war between the United States and Great Britain of 1812. Our diplomatic efforts at that time, and even later, were chiefly in the way of protests, and the question of impressment was only finally settled by the treaty between the United States and Great Britain of 1863, modified by that of 1871 on the subject of naturalization. During the war of 1812 prize courts in the United States enforced the generally acknowledged rule of international law that enemies' goods in neutral vessels were liable to capture and confiscation, except as to such powers with whom we had stipulated the contrary rule that free ships should make free goods.

During the war between France and Spain the French government proposed not to capture Spanish marine ships, and in an official proclamation of April 20, 1823, it was stated that the King only considered as enemies of France pirates and Spanish corsairs. These alone were the object of surveillance of the vessels commanded by the officers of the military marine. Apparently the French did not persist in this mode of action, for in the treaty concluded after the war there was an arrangement for indemnity for the prizes taken from each other during the war.*

* See Ch. de Boeck, *De la propriété privée ennemie sous pavillon ennemi*, p. 97, Paris, 1882; Lawrence's Wheaton, p. 630.

The French proclamation, however, was made the basis of action by our Government, and President Monroe, in 1823, issued instructions to our ministers at Paris, London, and St. Petersburg to propose the abolition in future hostilities of all private war at sea.

These instructions were probably not so much the work of President Monroe as of the Secretary of State, Mr. John Quincy Adams. Starting with the proposal to abolish the slave-trade, Mr. Adams sent a draft of a convention, to be concluded with England and other maritime powers, the prime object of which was to take the first steps toward the general abolition by all nations of private war upon the sea. In his despatch to Mr. Rush, July 28, 1823, Mr. Adams said:

"The result of the abolition of private maritime war would be the coincident abolition of maritime neutrality. By this the neutral nations would be the principal losers, and sensible as we are of this we are still anxious, from higher motives than mere commercial gain, that the principle should be universally adopted. We are willing that the world, in common with ourselves, should gain in peace whatever we may lose in profit."

The British government evaded the question. Mr. Rush was empowered to treat of other matters as well, and was unwilling to consider the general maritime questions without taking into action that of impressment. This England absolutely refused to consider, and at the same time declined to discuss the

question of the abolition of privateering without discussing the other maritime questions, so that there was a dead-lock.* Chateaubriand, in replying to Mr. Sheldon, our chargé d'affaires at Paris, was apparently willing to accede to this proposal provided all governments did the same. He said:

"If the trial successfully made by France can induce all governments to agree on the general principle which shall place wise limits to maritime operations, and be in accordance with the sentiments of humanity, his Majesty will congratulate himself still more in having given the salutary example, and in having proved that, without compromising the success of war, its scourge can be abated."

Count Nesselrode, in reply to Mr. Middleton, said:

"The principle will not be of great utility except so far as it shall have a general application."

The Emperor sympathizes with the opinions and wishes of the United States, and "As soon as the powers whose consent he considers as indispensable, shall have shown the same disposition, he will not be wanting in authorizing his ministers to discuss the different articles of an act which would be a crown of glory to modern diplomacy." †

The negotiation with Russia went on through different ministers—Randolph, Buchanan, and Wilkins—to the end of 1835, but the reply was always in the same sense, that a general understanding was neces-

* Congress. Doc., Senate, 18th Congress, 2d Session, Confidential.

† H. R. Ex. Doc., No. 3, 33d Congress, 1st Session.

sary before making any special treaties. Attempts to renew negotiations on this subject with Great Britain were made by Mr. Gallatin in 1826, and Mr. Barbour in 1828, but without success.

The rules with regard to the duties of neutrals during war are now very strict; but it was received formerly that neutral subjects could command and own privateers, provided that they possessed letters of marque from one of the belligerent states. In order to guard against this, the United States, from the very beginning, inserted in its treaties with foreign powers stipulations that if any citizen or subject of either of the contracting parties took a commission or letters of marque for the purpose of privateering against the other who was at war, it should be treated as piracy. Such treaties were made with France in 1778; with the Netherlands in 1782; with Sweden in 1783, renewed in 1816 and again in 1827; with Prussia in 1785, renewed in 1799, and again in 1828; with Great Britain in 1794; with Spain in 1795; with Colombia in 1824; with Brazil in 1828; with Chili in 1832; with Guatemala in 1849; and with Peru in 1851. Some of these treaties have now expired, especially those with England and France. In 1797 the United States passed a law to prevent citizens of the United States from privateering against nations in amity with, or against citizens of the United States. This was repealed in 1818; but the article

with regard to privateering against citizens of the United States was re-enacted. The substance of the provisions with regard to privateering against friendly nations was, however, retained in other words: for any person within the United States was prohibited from fitting out any ship or vessel to cruise or commit hostilities against the subjects, citizens, or property of any power or state with whom the United States are at peace.

During our war with Mexico there was great apprehension lest letters of marque should be accepted by the subjects of neutral states, although England and France expressly prohibited their subjects from accepting them, and the general laws of most other powers were to the same effect. President Polk, in his message of December, 1846, announced that he had called the attention of the Spanish government to the provision of the treaty of 1795 on this subject, and at the same time recommended to Congress to provide for the trial and punishment as pirates of any Spanish subjects who should be found guilty of privateering against the United States. It had been rumored that the United States would hang as pirates all foreigners on board of Mexican privateers; and the British minister at Washington, although Great Britain had forbid its subjects to engage in such enterprises, expressed to our Government the expectation that this threat would not be put in execution

against any British subjects. By an act passed March 3, 1847, it was declared piracy for any subject or citizen of a foreign state to make war against the United States or cruise against their vessels or property contrary to the provisions of treaties existing with that state of which they were subjects and citizens. This was certainly a great extension of the crime of piracy as known to international law.

At the outbreak of the Crimean War Austria and Spain issued declarations forbidding their subjects from taking letters of marque from any foreign power, and forbidding the use of their ports to privateers. Denmark, Sweden, and Norway followed this so far as to prohibit privateers from anchoring in their ports. England and France, by a declaration made on March 28, 1854, stated that for the present they would waive a portion of their belligerent rights; that they would waive the rights of seizing enemy's property, laden on board of neutral vessels, unless contraband of war; that they would not claim the confiscation of neutral property not being contraband of war found on enemies' ships; and being desirous to lessen as much as possible the evils of war, would restrict their operations to the regularly organized forces of the country, and would not issue letters of marque for the commissioning of privateers. Lord Clarendon, in conversation with Mr. Buchanan, our minister to London, spoke in very complimentary terms of the treaties of the

United States with different nations with regard to letters of marque; and while he did not propose the conclusion of a treaty for the suppression of privateering, expressed a strong opinion against the practice as inconsistent with modern civilization. On another occasion he spoke in high terms of our neutrality law of 1818, and pronounced it superior to the English, especially with regard to privateers. Mr. Buchanan replied to Lord Clarendon that

"It did not seem to him possible under existing circumstances for the United States to agree to the suppression of privateering, unless the naval powers of the world would go one step further and consent that war against private property should be abolished altogether upon the ocean, as it had already been upon the land. There was really nothing different in principle or morality between the act of a regular cruiser and that of a privateer in robbing a merchant vessel upon the ocean, and confiscating the property of private individuals on board, for the benefit of the captor."

Mr. Marcy, the Secretary of State, wrote to Mr. Buchanan that he did not think that the stipulations about letters of marque would be inserted in any new treaties; not that the Government would not prohibit, as far as possible, its own citizens from accepting letters of marque from other powers; but in case it was itself engaged in war it did not wish to preclude itself from resorting to the merchant marine of the country.

Mr. Marcy, in replying to the note of Mr. Cramp-

ton, the British minister, enclosing the declaration, expressed the satisfaction of the United States

"That the principle that free ships make free goods, which the United States have so long and so strenuously contended for as a neutral right, and in which some of the leading powers of Europe have concurred, is to have a qualified sanction by the practical observance of it in the present war by both Great Britain and France—two of the most powerful nations of Europe."

This satisfaction "Would have been enhanced if the rule alluded to had been announced as one which would be observed not only in the present, but in every future war in which Great Britain shall be a party. The unconditional sanction of this rule by the British and French governments, together with the practical observance of it in the present war, would cause it henceforth to be recognized throughout the civilized world as a general principle of international law. This Government, from its very commencement, has labored for its recognition as a neutral right. It has incorporated it in many of its treaties with foreign powers. To settle the principle that free ships make free goods, except articles contraband of war, and to prevent it from being called again in question from any quarter, or under any circumstances, the United States are desirous to unite with other powers in a declaration that it shall be observed by each hereafter as a rule of international law." *

What we maintained was that the right then existing under international law should not be waived from time to time, but should be surrendered altogether, and we were unwilling to accept anything less.

At the outbreak of the war Russia had extended

* Lawrence's Wheaton, p. 771, note.

certain privileges to Turkish vessels in Russian ports; but as these had not been reciprocated Russia insisted on asserting the rights of war to their whole extent against Turkish vessels, against Turkish goods, and against neutral goods on Turkish vessels. When England and France became engaged in war, Russia published declarations of a similar nature to those published by those powers, declaring that enemy's goods in neutral vessels would be regarded as inviolable, and the subjects of the enemy on board neutral vessels would not be molested. Mr. Marcy, in writing to Mr. Seymour, our minister to St. Petersburg, called attention to what had been done by Great Britain and France with regard to free ships making free goods, and spoke of the efforts of the United States in this direction, adding,

"This seems to be a most favorable time for such a salutary change. From the earliest period of this Government it has made strenuous efforts to have the rule that free ships make free goods, except contraband articles, adopted as a principle of international law; but Great Britain insisted on a different rule. These efforts, consequently, proved unavailing; and now it cannot be recognized, and a strict observance of it secured without a conventional regulation among the maritime powers. This Government is desirous to have all nations agree in a declaration that this rule shall hereafter be observed by them respectively, when they shall happen to be involved in any war, and that as neutrals they will insist upon it as a neutral right." *

* H. R. Ex. Doc., 103, 33d Congress, 1st Session.

Our ideas were so well received by Russia at that time that on July 22, 1854, a treaty was concluded at Washington between the United States and Russia by which

"The two high contracting parties recognized, as permanent and immutable, the following principles, to wit: 1. That free ships make free goods—that is to say, that the effects or goods belonging to subjects or citizens of a power or state at war are free from capture and confiscation when found on board of neutral vessels, with the exception of articles contraband of war. 2. That the property of neutrals on board an enemy's vessel is not subject to confiscation, unless the same be contraband of war. They engage to apply these principles to the commerce and navigation of all such states as shall consent to adopt them, on their part, as permanent and immutable."

Similar treaties were made with the Two Sicilies on January 13, 1855, and with Peru on July 26, 1856.

In reporting the treaty with Russia to Congress, in his annual message in December, 1854, President Pierce said:

"The King of Prussia entirely approves of the project of a treaty to the same effect, submitted to him, but proposes an additional article providing for the renunciation of privateering. Such an article, for most obvious reasons, is much desired from nations having naval establishments large in proportion to their foreign commerce. If it were adopted as an international rule, the commerce of a nation having comparatively a small naval force would be very much at the mercy of its enemy in case of war with a power of decided naval superiority. The bare statement of the condition in which

the United States would be placed after having surrendered the right to resort to privateers in the event of war with a belligerent of naval supremacy, will show that this Government could never listen to such a proposition. The navy of the first maritime power in Europe is at least ten times as large as that of the United States. The foreign commerce of the nations is nearly equal, and about equally exposed to hostile depredations. In war between that power and the United States, without resort, on our part, to our mercantile marine, the means of our enemy to inflict injury upon our commerce would be tenfold greater than ours to retaliate. . . . The proposal to surrender the right to employ privateers is professedly founded upon the principle that private property of unoffending non-combatants, though enemies, should be exempt from the ravages of war; but the proposed surrender goes little way in carrying out that principle, which equally requires that such private property should not be seized or molested by national ships of war. Should the leading powers of Europe concur in proposing, as a rule of international law, to exempt private property upon the ocean from seizure by public armed cruisers, as well as by privateers, the United States will readily meet them upon that broad ground."

The Chamber of Commerce of New York, on April 6, 1854, passed a series of resolutions which, though they differed somewhat from the policy of the Government, yet aided in strengthening its hands. They were in substance that the employment of privateers was contrary to all sound principles of morality, justice, and humanity; that the ravages caused only the ruin of private persons, without any advantage to the nation; that the United States ought to co-

operate with the efforts of European powers for the abolition of privateering; and that the example set in the principles proclaimed in the treaty of the United States with Prussia of 1785 should be supported by the Chamber.

At the Congress of Paris in 1856, subsequently to the conclusion of the treaty which ended the Crimean War, a declaration of principles was signed on April 16th, by the plenipotentiaries of all the powers represented there, which contained four articles:

"*First*, Privateering is and remains abolished.

"*Second*, The neutral flag covers enemies' goods, with the exception of contraband of war.

"*Third*, Neutral goods, except of contraband of war, are not liable to capture under an enemy's flag.

"*Fourth*, Blockades, to be binding, must be effective—that is to say, maintained by a force really sufficient to prevent access to the coast of the enemy."

The adherence of other powers was requested to these principles. The Belgian government proposed, in order to give these doctrines greater force and solidity, that they should be put in the form of a treaty or convention; but this was opposed by the English government, which feared difficulties in Parliament. These difficulties were not slow in coming, and they will be spoken of presently. The adherence, however, was given in full by all the states that now compose the German empire, although this was, in general, a

mere formality, as most of these states had no seaports; by Belgium, Bolivia, Brazil, Chili, the Argentine Confederation, Denmark, Ecuador, the Italian states, Greece, Guatemala, Hayti, New Grenada, the Netherlands, Peru, Portugal, Salvador, Sweden and Norway, Switzerland, and Uruguay. Spain and Mexico, wishing to preserve the right of privateering, refused to adhere to the first article; but declared their willingness to accept the three others. The action of the United States gave rise to much comment.

It had been inserted in the protocol of the proceedings, although not in the declaration itself, that this

"Declaration was indivisible, and that the powers which signed it, or should accede to it, could not thereafter enter into any agreement in regard to the application of the maritime law in time of war, which did not rest upon the four principles which are the object of the declaration."

It was admitted, however, on the motion of the Russian plenipotentiaries, that this provision could not have any retroactive power or invalidate any existing convention, and it was also conceded "that it would not be obligatory on the signers of the declaration to maintain the principle of the abolition of privateering against those powers which did not accede to it."

On July 14, 1856, Mr. Marcy sent a circular to the American ministers abroad informing them that the declaration of Paris had been submitted to our Gov-

ernment for adoption; and on July 28, 1856, he made a formal reply to the French minister, Count Sartiges, objecting to the indivisibility of the four articles, for two of which the United States had for a long time been in negotiation. He thought that the fourth article on blockade did not relieve the subject from the difficulty in determining what fulfilled the conditions of the definition. As to the first article, with regard to privateering, Mr. Marcy maintained that the right to resort to privateers is as incontestable as any other right appertaining to belligerents; and reasoned that the effect of the declaration would be to increase the maritime preponderance of Great Britain and France, without even benefiting the general cause of civilization; while if public ships retained the right of capturing private property, the United States, which had at that time a large mercantile marine and a comparatively small navy, would be deprived of all means of retaliation. Mr. Marcy said:

"A predominant power on the ocean is still more menacing to the well-being of other nations than a predominant power on land. For that reason all nations are equally interested in rejecting a measure tending to favor the permanent establishment of such a domination, whether such a domination should belong to one power or to several. The losses which would probably be the result of abandoning the domination of the sea either to one nation owning a powerful navy, or to several, are, above all, due to the custom of submitting private property on the ocean to capture by the belligerent powers. Justice

and humanity demand that this custom be abandoned, and that the rule in regard to property on land be extended to that on the sea. The President proposes, therefore, to add to the first proposition contained in the declaration of the Congress of Paris the following words: 'And that the private property of the subjects and citizens of a belligerent on the high seas shall be exempted from seizure by public armed vessels of the other belligerent, except it be contraband.'"

Theoretical writers on international law have generally blamed the conduct of our Government in thus apparently rejecting principles which it was one of the first to propose, and have laid great stress on the wrongfulness and abuses of privateering. It is, however, difficult to see how, except in the general want of discipline and in the predatory habits which it encourages, privateering is worse than the use of public ships for the capture of private property. In fact, those nations who have given up privateering have considered themselves perfectly justified in converting a merchant vessel into a ship of the navy by the simple process of giving her a regular commission and putting on board a naval officer as captain. We almost forget now that, even so lately as 1856, we had one of the largest commercial navies of the world, and a foreign trade which it was necessary to protect at all hazards. The statesmen who then had the direction of our Government saw the exigencies of the situation far more clearly than the writers on international law. Events, as will be seen, have shown that

they were justified in their course, and that our refusal to accept the declaration of Paris has brought the world nearer to the principles which we proposed, which became known as the "Marcy amendment for the abolition of war against private property on the seas."

There was another difficulty, which governments gradually saw, that the President had no constitutional power to accept the declaration of Paris unless it were put into the form of a treaty approved by the Senate, and duly ratified. Our courts, before whom all prize cases would come, would have refused to accept as a rule of law any declaration made by the President in another form, unless there were also a law or a treaty to that effect.

Among the minor states of Europe there was complete unanimity and a general readiness to accept our amendment to the rules; but before giving a formal reply they naturally waited the action of the great powers who had signed the declaration. Russia immediately consented. Prince Gortchakof immediately instructed Baron Brunnow on the subject of Mr. Marcy's note,

"In which the American proposition is developed in that cautious and lucid manner which compels conversion. The Secretary of State does not argue the exclusive interests of the United States; his plea is put for the whole of mankind. It grows out of a generous thought, the embodiment of which rests upon arguments which admit of no reply. The attention

of the Emperor has in an eminent degree been enlisted by the overtures of the American cabinet. In his view of the question they deserve to be taken into serious consideration by the powers which signed the treaty of Paris. They would honor themselves should they, by a resolution taken in common, and proclaimed to the world, apply to private property on the seas the principle of inviolability which they have ever professed for it on land. They would crown the work of pacification which has called them together, and give it an additional grant of permanence."

Baron Brunnow was instructed to say to the French Minister of Foreign Affairs "that should the American proposition become a subject of common deliberation among the powers it would receive a most decisive support" from Russia. "You are even authorized to declare that our August Master would take the initiative of this question."* Count Walewski, the French Minister of Foreign Affairs, informed our Government that France would agree to the declaration as modified by us, although a formal assent was deferred in order to consult the other parties to the treaty. Prussia, in May, 1857, also accepted Mr. Marcy's amendment, and said that "if this proposition should become the subject of a collective deliberation, it can rely on the most marked support of Prussia, which earnestly desires that other states will unite in a determination, the benefits of which will apply to all nations." Count Cavour gave the amendment his

* Lawrence's Wheaton, p. 640, note.

cordial approval, and regarded it as a very just and logical deduction from the original ideas of the Paris Congress, and said that if the Congress should reassemble, he would there be a warm advocate for it.

The only decided opposition to the American proposal came from England. Lord Palmerston talked both ways at different times. The policy of these rules was several times discussed in Parliament, and in a debate in the House of Lords on May 22, 1856, Lord Clarendon being attacked for having subscribed to the principle that free ships make free goods, defended himself on the ground that the declaration must be taken as a whole or not at all, and that if the United States accepted it, they must agree to the abandonment of privateering, which was to England more than an equivalent for a claim (*i.e.*, taking enemy's property in neutral vessels) which she could not maintain; that privateering must become more important than heretofore, as commerce carried on in sailing vessels would be absolutely at the mercy of a privateer moved by steam, however small. The truth of this last remark of Lord Clarendon was abundantly proved during our civil war. Lord Harrowby said that England had suffered more injury from privateering than she could inflict, and that the United States would derive no benefit from the treaty if they did not agree to abandon privateering.*

* Lawrence's Wheaton, pp. 637, 638, note.

However, before the English government had made any formal reply to our proposition, President Buchanan had succeeded President Pierce, and Mr. Marcy had been replaced by General Cass. Instructions were given to our ministers to suspend negotiations, and the Marcy amendment was practically withdrawn. The reasons which prompted our Government to this course are difficult to understand; but General Cass, in a circular of June 27, 1859, called the attention of European governments to the provisions of the declaration of Paris which affected enemy's property on board of neutral vessels, and insisted that the United States should have the benefit of this rule whether they had acceded to the declaration or not. The Italian war had at that time just broken out. England, it is understood, still maintains that, not being a party to the declaration, we have no right to the advantages of it in any war in which she should be a party and we should be neutrals.

The proposition, which we had for the moment abandoned, was revived in 1858 by Brazil, which in a note to the French minister at Rio de Janeiro, dated March 18, 1858, proposed that "all private property, without exception, of merchant vessels, should be placed under the protection of maritime law, and be free from the attacks of cruisers of war."

At the beginning of our civil war, there being ap-

prehension that the Confederate States might issue letters of marque, Mr. Seward thought that, if we should then accept the declaration of Paris, we could induce foreign governments to treat privateers coming from the Confederate States as pirates. He therefore, on April 24, 1861, addressed a circular on the subject to our ministers abroad, in which, while expressing his preference for the Marcy amendment, he said:

"Prudence and humanity combine in persuading the President, under the circumstances, that it is wise to secure the lesser good offered by the Paris Congress, without waiting indefinitely in hope to obtain the great one offered to the maritime nations by the President of the United States.*

Both England and France refused to accept the renunciation of privateering on the part of the United States, if it were coupled with the condition that it should be enforced on the Confederate States, holding that such action on their part would be a breach of neutrality and a participation in the civil disturbances of this country. There was, however, a disposition on the part of those governments to waive the privateering clause of the declaration, notwithstanding the indivisibility of the articles previously insisted upon, provided that the United States would accept the other three. Mr. Seward insisted that the tender of our adhesion to the declaration was "pure and

* Diplomatic Correspondence, 1861.

simple," and instructed Mr. Dayton to renew it in the form originally prescribed. The result was that the negotiations failed. Subsequently, when, on account of the Trent affair, it was feared that there would be war between the United States and Great Britain, Lord Lyons was instructed to say that Great Britain was willing to abolish privateering as between the two nations, if the United States would make the same engagement.

Meanwhile the principle of the immunity of private property at sea made headway in Europe. During the Italian war of 1859, all parties being signers of the treaty of Paris, the rules were strictly maintained; but in the treaty of Zurich, November 10, 1859, it was stipulated that, as an extension of the previous rules, Austrian vessels which had been captured and not yet condemned would be restored. Similar proceedings took place after the Mexican war, by a decree of the Emperor Napoleon on March 29, 1865. At the outbreak of the Danish war, in 1864, first Denmark and then Prussia and Austria, applied the old laws about prizes. But in the treaty Denmark agreed to restore the merchant ships captured, or pay for them. Thus, as Bluntschli says, "this treaty implicitly recognized the doctrine that, even in maritime war, private property ought to be respected." At the beginning of the war of 1866 the principles of Paris were carried still further, Austria, Prussia, and Italy all agreeing not

only to give a special protection to neutral vessels, but to exempt from capture even enemy's vessels which should not be carrying contraband of war, or trying to violate the blockade. At various times chambers of commerce of maritime cities—English, German, French, Belgian, and Danish—had passed resolutions in favor of the immunity of private property; and on April 18, 1868, on the proposition of Dr. Aegidi, the Federal Diet of North Germany passed almost unanimously the following resolution:

"The Federal Chancellor is invited to profit by the friendly relations at present maintained with foreign powers to begin negotiations for maintaining, by means of treaties, the freedom of private property on the seas in time of war, and make it the recognized principle of international law."

The Federal Council accepted the vote of the Diet, and invited the Chanceller to act according to the resolution which had been adopted. In consequence, according to the *Provinzial'sche Correspondenz* of Berlin, of August 26, 1869, the German minister at Washington was instructed to begin negotiations on this subject with the United States.

At the beginning of the war between Germany and France, in 1870, M. Garnier-Pagès, deputy of Paris, proposed, in the French legislature, that the capture of hostile commercial vessels should be abolished, as well as the blockade or the bombardment of commercial and open towns, the right of attack remain-

ing limited only to military ports and towns. This law was, however, only to be applied in cases of reciprocity. Although urgency was then granted to this proposition, the sudden revolution prevented its consideration. The Germans, on their side, by a royal ordinance of July 18, 1870, declared that French commercial ships would not be captured unless under the conditions in which neutral ships might be captured. There was no question about reciprocity. Selfish reasons, that is, a large commercial marine, a small navy, and an undefended coast may have entered into this; but the declaration was certainly an advance in international law. France did not reciprocate in exempting German commercial ships from capture, and on January 12, 1871, information was given to neutral countries that this declaration would be recalled after four weeks' delay, in order to protect neutral property which might in consequence of the declaration have been placed on French ships. Hostilities had ceased, however, before the four weeks had expired; and the threat of reprisals was therefore without result.

A sufficient time having elapsed after our civil war for us to forget the disturbance which it had caused us in every way, we again took up this principle, which we had been ready to relax in a moment of need. By a treaty of commerce concluded with Italy on February 26, 1871, we stipulated for all that we

had ever maintained. By Article 12 it was agreed that private property should be exempt from capture or seizure on the high seas, or elsewhere, by the armed vessels or by the military forces of either party, excepting, of course, contraband of war, and vessels attempting to enter blockaded ports. By Articles 13 and 14 blockades were more exactly defined, and the category of contraband of war was limited to arms and munitions by Article 15. In Article 16 it was recognized that citizens of either country may trade with the enemies of the other; that free ships make free goods, contraband excepted, but that this stipulation shall be applied only to those powers who recognize the principle. Stricter regulations were also made for the exercise of the right of search.

VIII.

THE FISHERIES.

Treaty of 1783.—Treaty of Ghent.—Our Contention.—Treaty of 1818.—Difficulties, Complaints, and Seizures.—Diplomatic Correspondence.—Treaty of 1854.—Its Abrogation.—New Difficulties.—Treaty of 1871.—The Halifax Award.—Abrogation of Treaty.—Temporary Prolongation of Privileges.—Present State of the Question.

THE question of the fisheries on the coasts of British North America is one which has occupied our Government since its foundation, and which, though several times settled by temporary arrangement, has now reached a point, through the lapse of these arrangements and the abrogation of treaties, where it is again under the actual consideration of our Government.

By Article 3 of the treaty of September 3, 1783, which recognized the independence of the United States,

"It is agreed that the people of the United States shall continue to enjoy unmolested the right to take fish of every kind on the Grand Bank and on all the other banks of Newfoundland, also in the Gulf of St. Lawrence, and at all places in the sea where the inhabitants of both countries used at any time heretofore to fish; and also that the inhabitants of the United States shall have liberty to take fish of every kind on such part

of the coasts of Newfoundland as British fishermen shall choose, but not to dry or cure the same on that island; and also on the coasts, bays, and creeks, and all other of his British Majesty's dominions in America; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalen Islands, and Labrador, as long as the same shall remain unsettled; but as soon as the same, or either of them, shall be settled, it shall not be lawful for said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of the ground."

In the preceding negotiations an effort was made to induce the American commissioners to give up the fishery rights. John Adams said, "I will never put my hand to any article without satisfaction about the fisheries," and the British negotiators yielded.

It will be observed that the right to take fish on the banks, which is a deep-sea or off-shore fishery, far away from any territorial jurisdiction, was recognized as a right inherent and belonging to the inhabitants of the United States, as indeed to any other people. The right to take fish in the deep waters of the Gulf of St. Lawrence was also recognized, apart from any claims to territorial jurisdiction over that Gulf by drawing a line from headland to headland. We claimed that the liberty which was secured to the inhabitants of the United States to take fish on the coasts of Newfoundland, under the limitation of not drying or curing the same on that island, and also on

the other coasts, bays, and creeks, together with the limited rights of drying or curing fish on the coasts of Nova Scotia, Magdalen Islands, and Labrador, were not created or conferred by that treaty, but were simply recognized by it as already existing. They had been enjoyed before the Revolution by the Americans in common with other subjects of Great Britain, and had, indeed, been conquered, from the French chiefly, through the valor and the sacrifices of the colonies of New England and New York. The treaty was therefore considered analogous to a deed of partition. It defined the boundaries between the two countries and all the rights and privileges belonging to them. We insisted that the article respecting fisheries was therefore to be regarded as identical with the possession of land or the demarcation of boundary. We also claimed that the treaty being one that recognized independence, conceded territory, and defined boundaries, belonged to that class which is permanent in its nature and is not affected by subsequent suspension of friendly relations.

The English, however, insisted that this treaty was not a unity; that while some of its provisions were permanent, other stipulations were temporary and could be abrogated, and that, in fact, they were abrogated by the war of 1812; that the very difference of the language used showed that while the rights of deep-sea fishing were permanent, the liberties of fish-

ing were created and conferred by that treaty, and had therefore been taken away by the war. These were the two opposite views of the respective governments at the conferences which ended in the treaty of Ghent of 1814. At the very beginning the British commissioners stated that these fishing privileges would not be renewed without some equivalent. The American commissioners, who had no special instructions on this subject, insisted that these rights and privileges still existed in spite of the war, and proposed either to incorporate into the treaty articles concerning the American right to fish in British waters and the British right to navigate the Mississippi, just as they had existed in the treaty of 1783, or else to omit them entirely. This latter proposition was accepted by the British commissioners, and for that reason the treaty of Ghent is entirely silent as to the fishery question.* Professor John Norton Pomeroy, in criticising in 1871 the arguments of the American commissioners, thinks that they did not make the best of their case. He agrees with the British claim that these liberties of fishing were not in the nature of demarcation of boundaries or their appurtenances, but insists that they were in the nature of a servitude, and of a permanent servitude. He says:

* In this connection it is interesting to read the pamphlet of Mr. John Quincy Adams, called the Duplicate Letters, published in 1822.

"The third article of the treaty of 1783 is in the nature of an executed grant. It created and conferred at one blow rights of property perfect in their nature, and as permanent as the dominion over the national soil. These rights are held by the inhabitants of the United States, and are to be exercised in British territorial waters. Unaffected by the war of 1812, they still exist in full force and vigor." *

Theoretically Mr. Pomeroy's doctrine may be correct; but unfortunately it was never put forward or insisted upon by our Government.

In consequence of conflicts arising between our fishermen and the British authorities, our point of view was very strongly maintained by Mr. Adams in his correspondence with the British Foreign Office, and finally, on October 20, 1818, Mr. Rush, then our minister at London, assisted by Mr. Gallatin, succeeded in signing a treaty, which among other things settled our rights and privileges by the first article, as follows:

"Whereas differences have arisen respecting the liberty claimed by the United States for the inhabitants thereof to take, dry, and cure fish on certain coasts, bays, harbors, and creeks of his Britannic Majesty's dominions in America, it is agreed between the high contracting parties that the inhabitants of the said United States shall have forever, in common with the subjects of his Britannic Majesty, the liberty of taking fish of any kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands; on the western and northern coasts of Newfoundland

* American Law Review, v., p. 426.

from the said Cape Ray to the Quirpon Islands ; on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks from Mont Joly, on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly indefinitely along the coast. And that the American fishermen shall have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks in the southern part of Newfoundland herein-before described, and of the coasts of Labrador; but as soon as the same, or any portion thereof, shall be settled, it shall not be lawful for said fishermen to dry or cure fish at such portion, so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground. And the United States hereby renounces forever any liberty heretofore enjoyed claimed by the inhabitants thereof to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America not included in the above-mentioned limits. *Provided*, however, That the American fishermen shall be permitted to enter such bays or harbors for the purpose of shelter, of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as shall be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby secured to them."

The American plenipotentiaries evidently labored to obtain as extensive a district of territory as possible for in-shore fishing, and were willing to give up privileges, then apparently of small amount, but now much more important, than of using other bays and harbors for shelter and kindred purposes. For that reason they acquiesced in omitting the word "bait" in

the first sentence of the proviso after "water." The proviso as at first proposed had read:

"Provided, however, that American fishermen shall be permitted to enter such bays and harbors for the purpose only of obtaining shelter, wood, water, and bait."

The power of obtaining bait for use in the deep-sea fisheries is one which our fishermen were afterward very anxious to secure. But the mackerel fisheries in those waters did not begin until several years later. The only contention then was about the cod fisheries. The renunciation of any liberty to take, dry, or cure fish in territory not included within the limits mentioned, was inserted by the American commissioners much against the wish of the British, as they desired to prevent any implication that the fisheries secured to us were a new grant, and in order to show that we still continued to maintain that they had been perpetually secured to us by the treaty of 1783.

In 1819 Parliament passed a statute to carry out the stipulations of the conventions of 1818, empowering the Privy Council to make such regulations and give such instructions as were deemed proper, and providing that any foreign vessel found fishing, or to have been fishing, or preparing to fish within three miles of the coasts, bays, creeks, or harbors outside of the limits specified in the treaty, might be seized and condemned; imposing fines for persons refusing to

depart from such bays on being required to do so, or neglecting to conform to any of the regulations. Between 1819 and 1854 the provincial legislatures adopted various laws relating to American fishermen, purporting to be based on the treaty of 1818, far more stringent and minute in their provisions than the imperial act, and in many respects, as our fishermen and our Government have claimed, contrary to the treaty. Very many seizures and confiscations of American vessels by the British authorities took place on the following grounds: 1, fishing within the prescribed limits; 2, anchoring or hovering in shore during calm weather without any ostensible cause, having on board ample supplies of wood and water; 3, lying at anchor and remaining inside of bays to clean and pick fish; 4, purchasing and bartering bait, and preparing to fish; 5, selling goods and buying supplies; 6, landing and transshipping cargoes of fish.

It will be seen that most of these difficulties arose from a change in the character of the fisheries. Cod, being caught on the banks, were seldom pursued within the three-mile limit. And yet it was to cod, and perhaps halibut, that all the early negotiations had referred. The mackerel fishing had now sprung up in the Gulf of St. Lawrence, and had proved extremely profitable. This was at that time an inshore fishery.

More than that, vessels at various times have been seized for fishing within large bays, such as the Bay of Fundy, although ten or fifteen miles from shore. The expression of "three marine miles from the coast," as used in the treaty of 1818, was interpreted by us to mean three marine miles from the coast following all its sinuosities. The English, on the other hand, claimed that this line should be measured at three miles' distance from extreme headland to headland, including all waters inside of this exterior boundary, and especially all bays and gulfs, whether great or small. Our claim seems first to have been presented to the British government in 1824, when we complained of interruptions to the taking and curing of fish in the Bay of Fundy by American citizens, and the seizure of their vessels. Mr. Addington replied in February, 1825, justifying such seizure on the ground that the fishing was within the limits of prohibition. The President, in 1840, communicated to Congress various documents relating to the arrest of vessels in 1839; and from that time until 1845 we had an elaborate diplomatic correspondence with Great Britain on this subject. On March 10, 1845, Lord Aberdeen announced to Mr. Everett that the British government did not admit the correctness of the construction put upon the treaty of 1818 by the United States, nor did it abandon its own interpretation; but from considerations of comity it would

relax its rights to the Bay of Fundy, but not to other bays. Mr. Everett refused to accept these concessions as a favor, but demanded them as a right. In 1852 the British government declared its intention of enforcing its rights with greater strictness, and sent a squadron to the fishing grounds; but Lord Malmesbury consented to leave the Bay of Fundy in the condition in which it had been placed by Lord Aberdeen in 1845. We based our arguments on the general principles of international law, which have been accepted by all except British authorities, and even by some of them. And our case was strengthened by the fact that in the treaty between Great Britain and France of August 3, 1839, stipulating for the right of fishing within a distance of three miles from low-water mark, the ninth article of that treaty provided that "this distance shall be measured in the case of bays, of which the opening shall not exceed ten miles, by a straight line drawn across from one cape to the other."

In 1853 a convention was made between Great Britain and the United States for referring various claims to a mixed commission for arbitration. One claim brought before this commission was that of the owners of the Washington, which had been seized in 1843 while fishing in the Bay of Fundy. The commissioners disagreed, but the umpire decided that as the Bay of Fundy is from sixty-five to seventy-five

miles wide, and from one hundred and thirty to one hundred and forty miles long, it is not a British bay nor a bay within the meaning of the word as used in the treaty of 1818.

So matters stood, when in 1854 a treaty was concluded at Washington by Mr. Marcy and Lord Elgin, the Governor-General of Canada, acting as British plenipotentiary, called the Reciprocity Treaty. By the first article it was agreed that

"In addition to the liberty secured to the United States fishermen by the convention of October 20, 1818, of taking, curing, and drying fish on certain coasts of the British North American colonies therein defined, the inhabitants of the United States shall have, in common with the subjects of her Britannic Majesty, the liberty to take fish of every kind, except shellfish, on the sea-coasts and shores, and in the bays, harbors, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and of the several islands thereunto adjacent, without being restricted to any distance from the shore; with permission to land upon the coasts and shores of those colonies and the islands thereof, and also upon the Magdalen Islands, for the purpose of drying their nets and curing their fish; provided that, in so doing, they did not interfere with the rights of private property, or with British fishermen in the peaceable use of any part of said coast in their occupancy for the same purpose."

Under the liberal provisions of this treaty there was a cessation of the complaints of our fishermen; but in 1866 this Reciprocity Treaty was abrogated on the motion of the United States. It was maintained by

our Government that in consequence of this abrogation the provisions of the treaty of 1818 again came into force. The claims on both sides, which had only been temporarily suspended by the Reciprocity Treaty, were also revived, and with them frequent disputes. The various laws of the provincial governments restricting the movements of American fishermen were revived by the Dominion act of May 22, 1868, with its amendment of May 10, 1870; and even on January 8, 1870, the Governor-General of Canada made an order "that henceforth all foreign fishermen shall be prevented from fishing in the waters of Canada." Mr. Fish, on May 31, 1870, called the attention of the British minister to the broad and illegal terms of this order, which directly contravened the treaty of 1818, and requested its modification. High commissioners met soon after in Washington, and after prolonged negotiations signed the treaty of 1871. The eighteenth article of this treaty revived the first article already quoted of the Reciprocity Treaty, stipulating, however, that it should exist for the term of ten years, and for two years after either of the contracting parties should have given notice to the other of its wish to terminate the same. The nineteenth article granted, as a compensation to British subjects, the right of fishing on the eastern sea-coasts and shores of the United States north of the thirty-ninth degree of latitude. The corresponding article of the Reciprocity Treaty

had given such rights down to the thirty-sixth parallel. By the twenty-first article it was agreed that for the term of years mentioned,

"Fish-oil and fish of all kinds (except fish of the inland lakes and of the rivers falling into them, and except fish preserved in oil), being the produce of the fisheries of the United States, or of the Dominion of Canada, or of Prince Edward's Island, shall be admitted into each country respectively free of duty."

As Great Britain asserted that the privileges accorded to the citizens of the United States were greater in value than those accorded by the United States to British subjects, an assertion that was not admitted by the United States, it was agreed that commissioners should be appointed to determine the amount of compensation which ought to be paid by the United States to Great Britain in return for these fishing privileges. This commission met at Halifax in 1877, the treaty having gone into effect on July 1, 1873. The commission was composed of one American, Mr. E. H. Kellogg, a New England country lawyer; Mr. A. T. Galt, a prominent Canadian statesman; and M. Maurice Delfosse, then Belgian minister at Washington. The British agent was Mr. Francis Clare Ford, now British Minister at Madrid; our agent was Mr. Dwight Foster, a distinguished lawyer of Massachusetts, assisted by Mr. William H. Trescot and Mr. Richard H. Dana, Jr. During the negotiations at Washington in 1871, we had proposed to

purchase the right to enjoy, in perpetuity, the use of the inshore fisheries, in common with British fishermen, and had offered the sum of $1,000,000. This was thought inadequate by the British negotiators. Now, after a session of over five months, after hearing evidence and arguments on each side, the Halifax commission, by a vote of two to one, on November 23, 1877, decided that we were to pay for a twelve years' use of these fishing privileges the sum of $5,500,000. The evidence was clear, for four years had already elapsed, that the fisheries were not in themselves worth this; but other claims were taken into consideration. There was, perhaps, a feeling of the necessity of offsetting the Alabama award, and our commissioner was certainly unfitted for his place. Hence this great award was given to our prejudice. There was a general dissatisfaction in the United States, but the money was paid without an official murmur, although we knew that these fisheries were becoming yearly of less value and use to us.

When the time came that this part of the treaty of 1871 could be terminated, Congress, by a resolution which was approved on March 3, 1883, directed the President to take the proper steps, and notice was accordingly given on July 1, 1883, of the termination of the treaty, which came to an end on July 1, 1885.

As the termination of the treaty fell in the middle of the fishing season, Mr. Bayard, the Secretary of

State, acting partly on the representations of New England fishermen, and partly at the suggestion of the British minister, agreed, on June 22, 1885, to extend the agreement of the treaty through the season of 1885, with the exception of the exemption from customs duties. This agreement contemplated further negotiations, and in his message of December, 1885, the President recommended the appointment of a commission for such negotiations. This recommendation has met with disfavor in Congress, on the ground that any reciprocity in fishing privileges would do us more harm than good. Indeed, the situation seems to have totally changed in the last few years. I cannot do better than quote on this subject from a recent article in *Science* of February 5, 1886, which seems to reflect the opinion of the United States Fish Commission:

"The fisheries-treaty question, which is now the subject of so much discussion, is a very complicated one; and it is not at all surprising that the Secretary of State, following traditionary policy of more than a hundred years' standing, and acting upon the long-established theory that participation in the fishery privileges of Canadian waters is of great value, should have failed to satisfy the expectations of the New England fishermen, who know so well that these privileges have long been valueless. A general impression seems to exist that our fishing-fleet no longer visits the Gulf of St. Lawrence, only because there has been a temporary desertion of those waters by the species of fish which they seek. Such, also, is the idea of the Canadians. In his recent article in the *North American Re-*

view, Lord Lorne patronizingly suggests to his 'good friends' across the line that they should not be too hasty in throwing aside the right to fish in English waters, because the fish may before long return in their former abundance.

"As a matter of fact, the abundance of fish in the Gulf has very little to do with the question as it now presents itself. Since 1871, when the Washington treaty was negotiated, a complete revolution has taken place both in the fisheries and the fish trade of the United States; and, strangely enough, this revolution was effected chiefly in the six years which intervened between the completion of this treaty and the meeting in 1877 of the Halifax convention, by which $5,500,000 were awarded to Great Britain as a compensation for a concession to our fishermen, which had ceased to be of value to them, in addition to the remission of duties on Canadian fish, which during the period of fourteen years have amounted to several millions of dollars. Our Government has thus, unintentionally of course, been paying each year a large subsidy to the fisheries of British North America, and developing the Canadian fisheries at the expense of our own; and Canadian competition has become so great that our fishermen feel that they have a strong claim upon the Government for some kind of protection. The fishermen therefore demand that the duty upon Canadian fish be restored, and that their own privileges shall be based upon the provisions of the treaty of 1818, which will again go into effect, if no new treaty arrangements are made. Our dealers in cured fish, on the other hand, mindful of the profits of handling the product of the Canadian fisheries, are clamorous for a continuance of the present free-trade policy.

"The revolution in the American fisheries is so extensive that it can scarcely be discussed in a notice so brief as this. One of the principal changes is the adoption of the purse-seine in the mackerel fishery, by which the fish are caught far out

at sea, and in immense quantities, by enclosing them in an immense bag of netting. Formerly they were taken solely with hooks by the 'chumming' process. This was in the best days of the Gulf of St. Lawrence mackerel fishery, when hundreds of American vessels would frequently lie side by side, throwing overboard vast quantities of oily, mushy bait, by which the schools of fish were enticed within reach. There is no reason to doubt that mackerel were as abundant then as now off our own coast, but the old method of fishing was not so well adapted to our waters. The purse-seine, on the other hand, cannot be used advantageously in the Gulf, nor is there any necessity for our fishermen to go so far from home for their fish. There does not appear to be any probability that our fishermen will ever return to the old methods. 'Chumming mackerel' is essentially a lost art.

"Another feature in the revolution is the introduction of improved methods of marketing fresh fish. With the extensive refrigerating establishments now in operation, and the facilities for rapid transmission of sea-fish inland, the demand for salted fish is relatively very much less than it was fifteen years ago. Then, too, the immense competition produced by the free entry of Canadian fish has lowered the price of cured fish until a very decided depreciation in its quality has resulted, with a consequent decrease in demand."

IX.

COMMERCIAL TREATIES.

General Commercial Treaties.—The Most Favored Nation.—Special Commercial Treaties.—Changes in Commerce.—Our Earliest Treaties.—Commercial Relations and Negotiations with Great Britain.—Treaties of 1794, 1806, and 1815.—Reciprocity Treaty of 1854.—Mr. Wheaton's Negotiations with the German Zollverein.—Advantageous Treaty Rejected by the Senate.—The Mexican Treaty of 1859.—That of 1883.—The Hawaiian Treaty.—The recent Treaty with Spain.

COMMERCIAL treaties are in their nature either general or special. The ordinary general treaties of commerce and navigation which secures to the contracting parties rights which otherwise would be granted only to subjects, are, in general, reciprocal in their nature, both parties granting like favors and immunities to the other. In such treaties it has been usual to insert what is called the "most-favored-nation clause," the effect of which is to give to each party the same treatment and the same privileges which have been or may be granted to the most favored nation without further specification or agreement. The form in which this clause has been inserted in

most of our treaties is as follows, from our treaty with Italy:

"The United States of America and the Kingdom of Italy mutually engage not to grant any particular favor to other nations, in respect to commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or on allowing the same compensation, if the concession was conditional."

The most-favored-nation clause is not expressed in our late treaties in as absolute terms as it generally is in foreign treaties; and, in speaking of "compensation," if the concession should be conditional, we have endeavored to keep to ourselves the right of making special commercial treaties, the stipulations of which should not be extended to other powers.

Special commercial treaties are of two varieties. One, where either by force or predominance certain favors are granted by one party which are not reciprocally granted by the other, and which are therefore not common to all the world, even under the most-favored-nation clause; and the other, where reciprocal advantages are stipulated for, but of a special nature. The general policy of the United States has been to avoid special commercial treaties, and to place the conditions of their commerce on an equality for the whole world. On several occasions we have derogated from this policy, especially with regard to

countries in our immediate neighborhood; and very recently the Government proposed a whole system of special commercial treaties which, if carried out, would perhaps secure to our commerce very great advantages. Whether these recent treaties be ratified or not, the system is one to which we shall undoubtedly be forced to come sooner or later. The increase in the manufacturing interests of several continental states, which make them rivals to England, the growth of their commerce, and the great importance which the governments of civilized states now give to commercial questions, have brought about a system of special commercial treaties in Europe which we shall be obliged to imitate, at least for the countries in this hemisphere, unless we intend to lose even those advantages which we have hitherto enjoyed. Changes in commercial theories and practices, as well as the changes brought about in transportation, to say nothing of those caused by new political systems, compel us to be on the alert and watchful lest our interests receive detriment. For example, a few years ago an attempt was made in Germany to protect German products by a higher freight tariff on the German railways for foreign goods. In practice, in one particular article, this worked disadvantageously; for Russian grain, instead of being sent through Danzig, found its way through the Hungarian port of Fiume, and was the immediate cause of the great

increase and the prosperity of that port. It has therefore been considered advisable in the most recent commercial treaties to insert a stipulation that no higher charge shall be made for the transportation of foreign goods over the railways of the country than for native goods. This was inserted in our recent treaty with Serbia of 1881.

The difficulty which we have had with certain foreign governments with regard to the importation of American pork will be obviated by more recent commercial treaties, which provide that the authorities of the country have power to forbid the importation of any articles which may be deleterious to public health. Such a provision not having been inserted in the most of our treaties with foreign powers, we are unwilling to yield to their declaration that questions of public health override all treaty stipulations.

While the United States were yet colonies of Great Britain, they had been precluded from any trade except with Great Britain itself, and with certain little valuable markets in Africa, the South of Europe, and the West Indies. The parallel of Cape Finisterre, the boundary of the northern trade, entirely cut off France, Holland, and the northern countries of Europe. So accustomed were the European powers to consider the colonial trade of especial value, that when the United States cut loose from Great Britain, both France and Holland were exceedingly anxious to

obtain the monopoly, or at least a great share of our commerce. However, in our commercial treaty with France of 1778, we simply admitted France to trade with the United States, without giving her any exclusive advantages. The same thing took place in our treaty of 1782 with the Netherlands; although the advantages expected to be derived from the American trade had greatly influenced Holland, and especially the merchants of Amsterdam, to a state of friendliness and subsequently to a treaty.

William Pitt, then Chancellor of the Exchequer, in March, 1783, after the provisional treaty and armistice had been concluded, and before the permanent treaty of peace had been made, wishing to attract the trade of America to Great Britain, and to continue the old commercial relations, brought a bill into Parliament, in which he proposed to admit American ships and American goods into Great Britain on the same principles as British ships and goods, with the same duties, and entitled to the same drawbacks, exemptions, and bounties. One of the chief adversaries of this proposition was Mr. Eden, afterward Lord Auckland, who feared that such an arrangement would injure British trade, and that it would be contrary to treaties with other powers, and who believed that in any case, as was indeed the fact, American commerce would continue to seek English markets instead of foreign ones. Such was the opposition that Mr. Pitt's

bill failed. Our commercial relations with England remained in an undefined condition all the more disagreeable to us, because when colonies we had had the right of trading with other British colonies, which after the Revolution was taken away from us. In 1790 our Navigation Act was passed, which laid a duty of fifty cents per ton on foreign vessels, and an extra duty of ten per cent., *ad valorem*, on all merchandise imported in them.

During the Confederation it was impossible to do anything for the furtherance of commerce because Congress had no power over commercial matters. It was, indeed, this very lack of power which finally brought about the Federal Constitution.

An attempt was made in 1794 to regulate the commercial relations of the two countries; but by the treaty of that year we succeeded in getting few advantages. The duties on all ships and merchandise were put in the two countries on the footing of the most favored nation. There was reciprocal and perfect liberty of commerce and navigation between the territories of the United States and the dominions of Great Britain in Europe. As far as the West India trade was concerned, ships of not more than seventy tons burden could trade between the United States and the West Indies; but their cargoes were to be unloaded in the United States; and more than that, American vessels were prohibited from carrying any

molasses, sugar, coffee, cocoa, or cotton, either from British islands or from the United States, to any part of the world except the United States. The object of this article was to prevent commerce in the products of the British West India Islands, which had for the sake of form been landed in the United States. It was not at that time thought that much cotton could be produced in the United States, although a small amount of it had indeed at that time been cultivated. Louisiana not yet being annexed, none of the other products could originate in the United States. Permission was given also to trade with the East Indies; but ships, after having loaded there, were obliged to proceed directly to the United States without touching at any other port or country, except at the island of St. Helena for refreshment.

In 1806 Mr. Monroe, then minister to England, and Mr. William Pinkney, of Maryland, were commissioned to negotiate a commercial treaty with Great Britain. This they did, and in some respects it was the most favorable treaty ever obtained from that power. The articles of the treaty of 1794, which had not expired, were confirmed, with some changes. The trade to India was made a direct one, going as well as coming—a change not so advantageous to us as the previous agreement. The colonial trade with an enemy's colony was arranged in a manner satisfactory to us at the moment, for we never had agreed to the

rule of 1756, which forbade the coasting and the colonial trade in war, if it had been forbidden by municipal law in peace. The list of contraband articles was lessened by excluding provisions. Unfortunately it had been found impossible to obtain any concessions from England with regard to the right of impressment of seamen claimed by that country, and in consequence the President, without even consulting the Senate, refused to ratify the treaty.

In 1815 we at last succeeded in concluding a commercial convention with Great Britain, the chief advantage of which was the entire abrogation between the two countries of discriminating rates on vessels and importations. Goods imported in American vessels were not to be charged higher duties than in British vessels, and *vice versa;* and American goods imported into Great Britain were not to be charged higher duties than those imposed in any other country. With regard to the East India trade the arrangement was substantially the same as in 1794; but not quite so favorable because American vessels were restricted to four ports of entry. We refused to allow the English to trade with our Indians; and they in turn refused to give us the use of the St. Lawrence River. This treaty was concluded for four years, but was subsequently renewed in 1818 for ten years,* and again

* For a full and interesting account of these negotiations with England, see the Diplomacy of the United States, by

in 1827 for ten years more. It was in vain that our Government struggled to obtain a more liberal arrangement, or at least a more liberal interpretation of the treaty.

Before 1845 trade with Canada and the British colonies was burdened with a system of differential duties which discriminated against foreign in favor of British goods, and prevented extensive importation into those provinces from the United States. The British colonial policy was changed in 1845, and the Canadian legislature, on receiving commercial liberty, in 1846 removed the differential duties. The immediate result was a great increase of trade, and the imports from the United States increased from about four millions of dollars in 1844 to about eleven millions in 1851. This relaxation of commercial restrictions was accompanied by propositions for reciprocal free trade between Canada and the United States. Mr. Packenham, the British minister, communicated with our Government on the subject in 1846; Mr. Bancroft was engaged in negotiations in London in 1847, and in consequence of renewed representations a bill was passed by the House of Representatives in 1848, though it did not reach a vote in the Senate. President Taylor submitted the subject to Congress in 1850, and President Fillmore again in 1851 and in

Theodore Lyman, Jr.—a book which is unfortunately out of print.

1853. Finally, after long negotiations, a treaty was signed, on June 5, 1854, by Mr. Marcy and Lord Elgin, which was duly ratified. This treaty settled for the time the fishery question, as well as that of the navigation of the St. Lawrence, and provided for reciprocal free trade in a specified list of raw materials. Owing, as has been already said, to a strong protectionist feeling in Congress, and to a dislike to Canada arising from incidents connected with our war, notice was given to terminate this treaty, and it accordingly came to an end on March 17, 1866.

In July, 1869, Sir Edward Thornton proposed new negotiations for a similar treaty, based on that of 1854, with the addition of manufactured articles to the free list, the mutual opening of the coasting trade, the protection of patents and copyrights, and extradition. Negotiations continued, but it was found impossible to come to a satisfactory arrangement, and provisions for reciprocal free trade were therefore omitted in the treaty of Washington of 1871.*

*See Senate Ex. Doc., No. 1, 32d Congress, 1st Session; H. R. Ex. Doc., No. 32, 38th Congress, 1st Session; H. R. Ex. Doc., No. 64, 31st Congress, 1st Session; Senate Ex. Doc., No. 3, Special Session, March 8, 1853; H. R. Ex. Doc., No. 40, 32d Congress, 2d Session; Report No. 4, H. R., 32d Congress, 2d Session; Report No. 22, H. R., 37th Congress, 2d Session; H. R. Ex. Doc., No. 78, 39th Congress, 2d Session; H. R. Ex. Doc., Nos. 240 and 295, 40th Congress, 2d Session; H. R. Ex. Doc., No. 36, 40th Congress, 3d Session; conf. Ex. Doc. A, Senate, Special Session, 1871.

Negotiations for commercial privileges with the German states were due chiefly to the initiative of Mr. Henry Wheaton, who was no less eminent as a negotiator than as a publicist. Mr. Wheaton arrived in Berlin, as minister, in June, 1835. There had been no minister before him except John Quincy Adams, who had been sent in 1797 for the renewal of the commercial treaty which had expired in 1795. Since that time Germany had taken on a very different form, partly in consequence of the arrangements made by the treaty of Vienna in 1815, and partly through the customs-union. At that time there were two: the *Zollverein*, composed of most of the states of Germany, except the Austrian dominions and a few northern countries, which formed a separate league known as the *Steuer-verein*. Prussia was at the head of the *Zollverein*. Mr. Wheaton was instructed by Mr. Forsyth to direct his attention to the establishment of commercial relations with Germany, as well as for the removal of the *droit d'aubaine* and the *droit de détraction*. One of Mr. Wheaton's first duties was to make a journey through parts of Germany and collect commercial information. Two things had especially attracted the notice of our Government: the high duties on tobacco, of which at least one-half of the American product was consumed in Germany; and the high duties on rice. By resolutions of the Congress of 1837–38 Mr.

Wheaton was instructed to procure a reduction of these duties. His negotiations went on for six years, for he was somewhat embarrassed by the question of the "most-favored-nation" clause; that is, whether, if we gave as an equivalent to Germany for the reduction of duties certain reductions, we would be bound to give them to all nations with whom we had treaties containing this clause. This question had first sprung up in consequence of the convention for the purchase of Louisiana, and of the commercial convention of 1815 with Great Britain, and it was in order to get rid of such obligations, as Mr. Forsyth wrote to Mr. Wheaton, that the preference accorded to French wines was inserted in the treaty with France of 1831. Mr. John Quincy Adams had argued on the American side, and it was believed answerably, in 1817, with regard to the Louisiana treaty; and Mr. Wheaton always contended for the same views.* Mr. Wheaton went before the Congress of the *Zollverein* at Dresden in 1838 and presented a memoir, by which he obtained a reduction of duties on rice, although not immediately upon tobacco. The reciprocity stipulations in our previous treaties were thought to operate disadvantageously to American navigation in the case of the Hanse towns, especially in regard to tobacco. For while in

* See Congress. Doc., 18th Congress, 2d Session, No. 91; also, Lawrence's Wheaton, notes on pp. 493, 494, ed. of 1863.

1828 there was a great preponderance in favor of the American vessels, in 1835 the difference in the tobacco trade alone was six to one against our mercantile marine. It was, therefore, that, in the treaty with Hanover of 1840, Mr. Wheaton introduced a less extended reciprocity than had been adopted in the previous German treaties.

In May, 1841, Mr. Webster compiled, from the materials furnished him by Mr. Wheaton, a report on our commerce with the *Zollverein*, which was laid before Congress with the President's message, and the suggestion was made of entering into a commercial treaty with the *Zollverein*. In 1842–43 Mr. Wheaton attended further sessions of the Commercial Union, but difficulties were raised in consequence of the augmentation by our tariff of 1842 of the duties on articles imported into the United States from Germany, and retaliatory measures had been suggested. Nevertheless Mr. Wheaton was finally successful in signing a treaty on March 25, 1844. The United States agreed not to impose on certain articles of produce or manufacture of the states of the *Zollverein* duties exceeding twenty per cent., *ad valorem;* on others, duties exceeding fifteen per cent.; and on a third class, duties exceeding ten per cent. They agreed also not to increase the duties on wines sent from Prussia, nor to impose higher duties on the wines from the other states. The *Zollverein*, in con-

sideration of this, agreed to reduce the duties on tobacco and lard to a stipulated rate; not to raise the existing duties on rice; and not to impose any duty on unmanufactured cotton. These reductions, however, were only to apply to goods laden on board the vessels of one of the contracting parties, or on vessels placed on the footing of national vessels by treaties, and imported directly from the ports of one party to those of the other.

Mr. Wheaton's treaty was considered as a masterstroke by most of his colleagues and by our Government, and naturally aroused the jealousy of Great Britain and of other maritime powers, who attempted to claim the same advantages without rendering any corresponding equivalent. Transmitting this treaty to the Senate in April, 1844, the President said in his message that he "could not but anticipate from its ratification important benefits to the great agricultural, commercial, and navigating interests of the United States."

This treaty was rejected by the Senate, by a strictly party vote of twenty-six to eighteen, on the single ground that "the Legislature was the department of Government by which commerce should be regulated and laws of revenue passed;" that therefore the State Department had no right to interfere in such regulations by negotiations. This view was contested by Mr. Calhoun, who became Secretary of State after the

sudden death of Mr. Upshur, and he said that the objections of the committee were opposed to the uniform practice of the Government. "So well established," says he, "is the practice, that it is believed that it has never before been questioned. The only question it is believed that was ever made was, whether an act of Congress was not necessary to sanction and carry the stipulations making the change into effect." In a private letter to Mr. Wheaton, of June 28, 1844, he spoke of the reasons assigned for its objection as very inconclusive.*

The objections made to the *Zollverein* treaty seemed afterward to be deemed untenable; for the Canadian Reciprocity Treaty with Great Britain, of 1854, which was made in the same way, was at once ratified, although it varied the existing tariff, and a law to carry it into effect was passed by Congress.

In 1859 Mr. McLane was sent as minister to Mexico, with instructions to conclude a commercial treaty. Unfortunately, owing to the slavery question, our country was then in such a state that anything begun by Mr. Buchanan was treated with suspicion by a large party at the North, and a treaty, in many respects very advantageous to us, was rejected by the Senate. At that time the government of President Juarez was shut up in Vera Cruz, and it was believed

* Lawrence's Wheaton, ed. of 1863, Introductory Remarks, p. cvii.

at Washington that by giving him an indefinite promise of eventual support he could be induced to sell to the United States certain provinces of Mexico. It was understood that at first Mr. Buchanan demanded Lower California, Sonora, Chihuahua, and a part of Coahuila. These offers being declined our Government then reduced its demands to Lower California only, and made the cession of that territory a *sine qua non* of the treaty negotiations. When it was ascertained that the Mexicans would not sell a foot of their territory, Mr. McLane received instructions in August, 1859, to abandon such demands. During that time, however, there had been a change in the cabinet of Juarez, and Mr. McLane was obliged to return home at the end of August without any treaty at all. In November he was sent back again. Mr. O'Campo had returned to the cabinet as Minister of Foreign Relations, and negotiations were renewed and a treaty signed on December 14th. This had one very important commercial article, the eighth, giving a list of merchandise, from which the Congress of the United States was to be allowed to

"Select those which, being the natural industry or manufactured product of either of the two republics, may be admitted for sale or consumption in either of the two countries under condition of perfect reciprocity, whether they be considered free of duty or at a rate of duty to be fixed by the Congress of the United States; it being the intention of the Mexican republic to admit the articles in question at the low-

est rate of duty, and even free, if the Congress of the United States consents thereto."

There were, however, other important stipulations; one which allowed free transit, without duty, across the isthmus of Tehuantepec, with ports of deposit, one on the east and one on the west of the isthmus, and also a free right of way of transit from Matamoras, or any suitable point on the Rio Grande, to the port of Mazatlan on the Gulf of California. Mexico agreed to employ the requisite military force for defending these routes should it ever become necessary; "but upon failure to do this, from any cause whatever, the Government of the United States might, with the consent or at the request of the Government of Mexico or their minister, or other competent legal authorities, employ force for this and no other purpose." Still further provision was made for an exceptional case of unforeseen or imminent danger to the lives and property of citizens of the United States, when the United States troops could be employed for their protection without any consent having been previously obtained.

"In consideration of these stipulations and compensation for the revenue surrendered by Mexico on the goods and merchandise transported free of duty through the territory of the republic,"

the United States agreed to pay Mexico the sum of $4,000,000; but two millions were to be retained for

the payment of claims of citizens of the United States against the government of Mexico.

The Mexican treaty came up first in the executive session of the Senate on February 28, 1860, and, as we learn by the account of the proceedings in the New York *Tribune* of the following day, it was violently opposed both by Senator Wigfall, of Texas, and Senator Simmons, of Rhode Island, who said:

"It is substantially reciprocal free trade with Mexico, which would require us in the clause inserted in every commercial treaty for the last forty years of admitting each nation on an equal footing with that of the most favored nation, to allow other nations to claim similar privileges, and would result in destroying our revenue and compelling a resort to direct taxation."

The treaty came up again in executive session on May 31st, when Mr. Simmons took opposite ground to that which he apparently held at the first session, and proposed a number of amendments to regulate the articles to be admitted free of duty in either country according to the eighth article. Among these we find from Mexico, tobacco, sugar, and wool. Mr. Hammond objected to the treaty, on the ground that it would be equivalent to the practical annexation of Mexico, and he could not see how the South would be benefited by it; and Mr. Seward was unwilling to commit the Government to an important treaty with a faction which might be immediately

deposed by another, which would repudiate the action of its predecessor, and that we would then be compelled even to surrender what had been acquired, or probably to resort to war for its enforcement. The amendments of Mr. Simmons were rejected by a vote of twenty to twenty-six, and Senator Wigfall then moved an amendment providing for a reclamation of fugitives from service or labor, which received a majority, but not a two-thirds majority. The treaty was defeated by eighteen to twenty-seven, Senators Simmons and Anthony being the only Republicans who voted in favor of it. A motion was made to reconsider, and it came up again on June 27th, but it then went over to the next session, and was never ratified.*

The extension of the Mexican railway system to connect with the railways of the United States, and the great increase of the American capital invested in Mexico, led to a resolution in the Senate, on April 5, 1882, authorizing negotiations for a commercial treaty with Mexico. General Grant and Mr. William Henry Trescot were appointed commissioners on the part of the United States, and Mr. Romero and Mr. E. Cañedo on the part of Mexico. This treaty was signed at Washington on January 20, 1883, and provided for the entry into the United States, free of

*See The Mexican Papers, No. 3, September 15, 1860, by E. E. Dunbar.

duty, of twenty-eight articles of Mexican produce, including, among other things, coffee, unmanufactured leaf tobacco, and sugar of not above sixteen of the Dutch standard and color. Seventy-three articles of American produce and manufacture were to be admitted free of duty into Mexico, including coal, petroleum, iron machines, and many manufactured articles. This treaty was to last six years, but could not be ratified until the Congress of the United States and the Mexican government had passed the laws necessary to carry it into effect. It was, however, provided that the contracting parties were free to make such changes in their import duties as their respective interests might require, and to grant to other nations the same liberty of rights in regard to one or more of the articles of merchandise named in the annexed schedules, either by legislation or treaties; but if such changes were made, the party affected might denounce the treaty before the six years had elapsed, and it would be annulled in six months after such denunciation.

This treaty, after a long debate and several postponements, was finally approved by the Senate; but as Congress has never yet been willing to pass the laws necessary to carry it into effect, it has not yet been ratified. Our delay in this matter has been prejudicial to us; for Germany and Great Britain have not been slow to profit by it in beginning negotiations

for treaties more beneficial to themselves than to us; and if the time should come when Congress should finally consent to put this treaty into operation, we may find that the advantages which we once could have had are no longer ours. That question, however, belongs to the sphere of legislation and not to diplomacy.

From a diplomatic point of view it is possible that, considering our extensive land frontier of Mexico, and the ease of railway communication, we might have adopted some different method of obtaining the same result, and one which would shut out European nations from the same privileges. We might, for instance, have adopted the extended definition of local frontier traffic, introduced by Austria into her treaty with Serbia, by which the whole produce of the United States, or of Mexico, might have been included within the articles of local frontier traffic.

The condition of the Hawaiian Islands had been such for many years as to excite the apprehension of our statesmen. The trade of that country demanded an outlet, and unless facilities were afforded by the United States, there was great fear lest the commerce of the country should be monopolized by Australia and the English, which would result in the Islands becoming practically a British possession. From a political point of view such a prospect had been most unpleas-

ant for the United States, and it was at last decided, in 1874, to negotiate a commercial treaty with the Hawaiian Islands, admitting various of their products, especially sugar, free of duty into the United States, in return for the remission of duties on many objects of American manufactures and production. This treaty was signed on January 30, 1875. Ratifications were exchanged on June 3d of the same year, and Congress subsequently passed a law carrying its stipulations into effect. By one article the government of the Hawaiian Islands agreed to impose no export duty or charges on the articles admitted free of duty into the United States, so that it was impossible for the amount of revenue given up by our Government to be taken by the Hawaiian Islands in the way of an export duty. The necessity of this stipulation was obvious from the fact that when, some years before, in order to answer the cry for a free breakfast table, our customs duties had been taken off from tea and coffee the government of Brazil immediately placed an export duty on the coffee sent from that country, and the result was that the price of coffee in the American markets was in no way diminished; but the amount of revenue which the United States gave up was simply put into the treasury of Brazil. Had we, at that time, instead of putting coffee upon the free list, made a commercial treaty with Brazil by which special advantages of some kind had been ob-

tained in return for taking the duty off coffee, the state of our trade with Brazil would have been much more favorable to us than it is at present. It was also agreed that the Hawaiian Islands would not grant to any other nation the same privileges relative to the admission of articles free from duty as was secured to the United States; and it was also agreed that so long as the treaty should remain in force the government of the Hawaiian Islands should not lease, or otherwise dispose of, or place any lien upon any port, harbor, or other territory in its dominions, or grant any special privilege or rights of usage therein to any other power, state, or government. This stipulation was more of a political than of a commercial nature.

In order to carry out these provisions of the treaty the Hawaiian government was obliged to submit to considerable loss. For, in order to satisfy Great Britain, which claimed the privileges of the most favored nation, a remission of fifteen per cent. was granted on the duties fixed by the general tariff laws of the kingdom. In a subsequent treaty with the German empire, on September 19, 1879, it was stipulated that the special advantages granted to the United States of America, in consideration of equivalent advantages, could not be claimed by Germany; and a similar declaration was inserted in a treaty made with Portugal.

The result of this treaty has been, on the whole, in spite of some slight drawbacks, exceedingly favorable to the United States, and the efforts to denounce it have thus far failed. The exports from the United States to Hawaii increased from $809,000 in 1876 to $3,523,000 in 1884; and the imports increased, in like way, from $1,383,000 in 1876, to $7,926,000 in 1884. The population of the Hawaiian Islands being about seventy thousand, the exports from the United States amounted to about fifty dollars per head, while the consumption in 1876 was only $12.66 per head. The imports of American goods free of duty into Hawaii in 1883 amounted to over fifty-six per cent. of the total amount, being $3,169,000 out of $5,624,000. There would seem to be an excess of imports into the United States from the Hawaiian Islands over the exports of nearly four and a half million dollars; but this amount is not returned to the Sandwich Islands in coin, because it is paid in this country. It simply goes from the hands of one American to those of another. In fact, commercially speaking, the Hawaiian Islands have become almost an American possession. Mr. Daggett, the American minister, reported in October, 1883, that fully two-thirds of the sugar plantations in the Islands belonged to citizens of the United States; out of an aggregate valuation of over fifteen million dollars Americans owned over ten million dollars. In 1884 ninety-five per cent. of

the total commerce between the United States was effected on American vessels, and this brought with it the purchase of stores in the United States. While the Hawaiian commercial marine has greatly increased since the signature of the treaty, nearly all of the new vessels were of American build.

It has been urged against this treaty that the price of sugar is no lower in the Pacific States than it was before the treaty, or than it is in the East. This is not due to the working of the treaty itself, but to other circumstances. So long as Manilla sugar, that is, the sugar imported from the Philippine Islands is burdened with the duty, the cost of the Hawaiian sugar, which is entirely bought up by sugar refiners, and only sold to the consumer in a refined state, will be about the same as the cost of sugar refined from the Manilla raw sugar. Competition from the Eastern States is shut out by contracts made by these same sugar refiners with the railway companies, who, it is stated, receive the value of the freight which they would take for the transportation of sugar from the Eastern States, with a handsome bonus besides, on condition that they shall transport none at all.

In speaking of the recent commercial arrangement with Spain, and especially of our trade with the Spanish Antilles, it is necessary to take into account what difficulties had hitherto been placed in the way

of our commerce. The old colonial system—that is, which considered the trade with the colonies to be a simple extension of the coasting trade—had always been kept up by Spain, and a system of discriminating duties had been placed on imports, especially in Cuba and Porto Rico, designed to favor trade with the mother country, as well as to favor Spanish vessels trading between the colonies and either home or foreign ports. There were four distinct tariff rates applicable to these islands. What is called the first column applied only to goods brought from Spain under the Spanish flag. The second fixed duties at about double the rate of the first on goods of Spanish origin taken in foreign vessels. The third, about treble the rate of the first, applied to goods brought from any foreign country under the Spanish flag. The fourth column contained duties four or five times greater than the most favored rate of the first column, and were applied to foreign goods brought to Cuba or Porto Rico under any foreign flag. As from two-thirds to three-fourths of the whole export trade of the Spanish Antilles had been with the United States, and as the American sailing vessels, being better fitted for the traffic, had obtained a great share of the carrying trade, notwithstanding discriminating duties, this discrimination of tariffs bore heavily on the trade with the United States.

Among other regulations imposed by the rule of

the particularists and protectionists which obtained such strength during the war of the rebellion, an act of Congress of June 30, 1864, imposed ten per cent., *ad valorem*, in addition to all other duties, on merchandise imported in any ships or vessels not of the United States. This discriminating duty was of course not applicable to any countries which were entitled by treaties or by acts of Congress to the same privileges as vessels of the United States. There was no treaty with Spain on this subject, and therefore the ten per cent. discriminating duty was imposed on all articles brought from Spain or the Spanish colonies to the United States in Spanish ships. Subsequently, however, by a series of partial agreements, this discriminating duty was abolished as concerns Spain itself, and all the Spanish possessions, except Cuba and Porto Rico, and this exception was announced by the proclamation of the President of December 19, 1871. Spain considered this law as an unfriendly act, and retaliated by imposing, even on merchandise carried in vessels bearing the Spanish flag, the same duties as if they had been carried under a foreign flag. This was directed solely against the United States, for merchandise coming from any other country would pay the duties fixed by the third column of the tariff, that is, from thirty to sixty per cent. less. But against the products of the United States the discrimination which had hitherto been

partial was made total. From that time on there were protracted negotiations to get rid of this discriminating duty; but the Spaniards refused to remove it until we had removed the discriminating duties imposed by the act of 1864, and the President was only empowered to remove these in cases where other countries had removed their discriminating duties.

Besides this, the Spanish government had imposed what was practically an export duty on articles sent from the United States to Cuba and Porto Rico, by refusing to verify ships' manifests until a certain tax was paid, based upon the tonnage of the cargo and not upon the clerical service rendered. This was paid to the Spanish consul before the vessels could clear for Cuba or Porto Rico. We protested against this on the ground that it was not, properly speaking, a consular fee, but that it was a tax on exports from the United States, such as under the Constitution our Government was expressly prohibited from levying.

Furthermore, a heavy import duty had been imposed on Cuba on live fish brought to the island in foreign vessels, which was practically prohibitory, and nearly destroyed a lucrative industry pursued by the fishermen of Florida. Owing to the nearness of Florida to Cuba Spanish vessels would clear from Havana for a coast port, and would then go to the

coast of Florida or into the Gulf of Mexico and fish, and introduce the product as if caught on the Cuban coast; while American vessels with the same cargo were subjected to this heavy duty.

Owing to the erroneous classification of our diplomatic posts, which insists on regarding the legation to Madrid as one of the second class, instead of being, what it really is, our second diplomatic post, in importance inferior only to the legation at London; and owing also to the system under which diplomatic appointments have been made, so that if by chance a good or experienced man were sent to Madrid he was soon replaced by a hack politician, neither intelligent nor experienced, it was impossible to make headway in our negotiations. Fortunately for our interests the Government finally sent to Madrid Mr. John W. Foster, who had already had several years' experience as minister to Mexico, and subsequently to St. Petersburg, who understood the language and the people, and who happened to be well acquainted with the state of our trade with the West Indies. He succeeded, on January 2, 1884, in making an agreement, in the nature of a *modus vivendi*, between the United States and Spain, by which the differential flag duty was abolished, and articles coming from the United States paid the duties imposed by the third instead of the fourth column of the tariff; by which the duty on live fish was made void for the United

States; and by which the Spanish consular officers ceased to impose or collect tonnage fees on the cargoes of vessels leaving the ports of the United States for Cuba and Porto Rico. The United States at the same time agreed to remove the extra ten per cent. duty under the act of 1864, and perfect equality of treatment between the said Spanish provinces and the United States was established, thus removing all extra duties or discrimination in general as to other countries having the treatment of the favored nation. The two countries at the same time bound themselves to begin negotiations for a complete treaty of commerce and navigation. For this arrangement another one, varying in some slight matters, and leaving out the agreement for treaty negotiations, was substituted on February 13, 1884.

Subsequently Mr. Foster was successful in negotiating a commercial treaty, which was signed on November 18, 1884, which in general put American vessels and American trade on the same footing with Spanish trade, and contained certain stipulations with regard to the commerce of the United States which were not granted to other foreign countries.

Apart from reductions of duties the treaty with Spain is remarkable, being the most perfect commercial treaty in all its provisions that has ever been signed by the United States, and redounds greatly to the credit of the negotiator. All restrictions and

technical peculiarities to which American exporters and shippers had been subjected for many years were abolished, and it was arranged that foreign products sent from the United States in American vessels should have the same privileges as though shipped in Spanish vessels. Tonnage dues on both sides were completely abolished, as well as consular fees, which, especially on the Spanish side, had been a heavy burden. The treaty of 1795 did not contain many of the stipulations of more modern treaties with regard to the rights of persons, property, and commerce to the disadvantage of our interest. These defects were fully supplied, and the result of this treaty would be to prevent most of the complaints of American property-owners, such as have arisen in the recent insurrections in Cuba. This treaty differed from former reciprocity treaties, which provided only for the free admission of certain goods, in providing, also, for the favored admission of an additional list of articles at a specified reduction of duties from the existing customs tariffs. It was arranged that these products should be exchanged at the lower rate of duties only when carried in American or Spanish vessels, which is certainly an important provision for the development of our shipping. It was forbidden to lay export duties in either country on the articles admitted free of duty, and the export duties imposed in Cuba on sugar were reduced to the lowest rate consistent

with the obligations of the Cuban bond-holders, to whom these revenues had been pledged, that is, one-sixth of a cent per pound. No greater internal taxes were to be levied on American products in the Spanish islands than on native products. This important provision, which is now generally inserted in American commercial treaties, was to prevent the imposition of municipal dues and what are called "taxes on consumption," which amount to the same thing as customs dues. Such a provision was not inserted in the Mexican treaty, although it was admitted that the "taxes on consumption" imposed in the various provinces, and in the city of Mexico itself, frequently doubled or trebled the customs duties.

While in the treaty with Mexico it was provided that in case of any important changes in the customs duties of either country there would be a right to denounce the treaty, this right was specially given up by Article 24 of the Spanish treaty, and each power was allowed to make such changes in their customs, tariff, and navigation dues as they may see proper, and to extend to other powers freedom of duties, reductions, and favors equal or similar to those stipulated in the treaty under the same or similar conditions, the principle being maintained, on which we had before insisted, that the most-favored-nation clause of treaties cannot be applied in its unrestricted sense to reciprocity conventions; but that, when two nations

stipulate for special favors or reciprocal reduction of duties upon specified conditions, third powers cannot claim or enjoy like favors except upon the same or equivalent conditions. It was agreed, however, by Article 23, that any favors or concessions granted to a third power could be enjoyed by the other party to this treaty gratuitously, if the concession shall have been gratuitous, or upon giving the same or other equivalent compensation, if the concession should be conditional.

By a protocol annexed to the treaty it was agreed that the *modus vivendi* of January 2 and February 15, 1884, should terminate, the result of which was that while we gained by the treaty all of the advantages which we had received by the *modus vivendi*, they terminated as far as other countries were concerned.

The important items on the list of articles to be admitted either free or at a reduction of duty were of Cuban produce—sugar and tobacco. As to sugar, all grades not above No. 16 of the Dutch standard were to be admitted into the United States free of duty, and on tobacco in general the duty was reduced by fifty per cent. The list of American goods admitted into the Spanish colonies at either free or reduced rates was very much greater; and the concessions made were such as to be very beneficial to our export trade. The duty on petroleum, for ex-

ample, was reduced from $6.40 to $1 per hundred kilogr.; on wheat, from $3.15 to 50 cents per hundred kilogr.; on flour, from $4.70 to $2.50, and $1.65 a barrel, not to mention the very great reduction on manufactured goods of all kinds.

This treaty was submitted to the Senate on December 10, 1884, and was made public about the same time. Some of its provisions excited considerable opposition, especially on the part of the particularists and protectionists, who feared lest the sugar and tobacco interests might be affected. As far as the sugar refiners were concerned there could be little question. Sugar duties are now arranged so as to prevent the consumption of any but refined sugar. So heavy a duty is placed on the higher grades of unrefined sugar that we no longer find in use here those brown and half-brown sugars which were formerly so common, and which are so much liked and so much consumed in England. The only way in which the treaty was not wholly in the interest of the sugar refiners was in admitting the grades of sugar between No. 13 and No. 16, and it was thought that if the treaty could be amended by substituting No. 13 for No. 16 there would be no interference whatever with the business of the sugar refiners.

What the sugar-refining interests amounts to we may see from a letter from various leading merchants in New York to Senator Miller, the Chairman of the

Senate Committee on Foreign Relations, dated New York, December 28, 1884. In the year 1880, as appears from the census returns, there were employed in all the sugar and molasses refining establishments of the United States five thousand eight hundred and thirty-two men and twenty-five children. The wages paid were $2,875,032. The refined product for the year was worth the enormous sum of $155,484,915. The total cost for materials was $144,698,499, and, adding the cost of wages, the total cost of the manufactured product was $147,573,531, leaving the sum of $8,000,000 for the interest on capital invested and for profit.

But objections also were made to the treaty on the ground that as Cuba and Porto Rico supplied us with only about two-thirds of the amount of sugar used, the price of sugar in the market, to the consumer, would remain about the same so long as any amount whatever paid duty, and the result would be that the revenue which the United States gave up by taking off the duties on Cuban and Porto Rico sugar would simply go into the hands of the Spanish planters in the shape of increased profits. In one sense this is true, but it could only remain true until Cuba and Porto Rico were enabled to supply us with the whole amount of sugar that we need, or until other similar commercial treaties were made with other sugar-producing countries. These last are chiefly

three: other Spanish possessions, especially the Philippine Islands, the British West Indies and Guiana, and Brazil. It was claimed by many who were conversant with the subject that the impulse given to the sugar industry in Cuba and Porto Rico would be sufficient within one, or at most two years, to supply us with the whole amount that would be consumed, although with cheaper sugar its use would be greatly extended.

It would be wrong to consider the commercial treaty with Spain as standing alone, but it should be considered as forming part of a system. A similar treaty was concluded at about the same time with St. Domingo, and another one was in process of negotiation with the British West India Islands. Unfortunately these negotiations all took place toward the close of an administration, and another party coming into power was unwilling to be hampered by the acts of its predecessor. The result was that the Spanish treaty was withdrawn from the Senate before being acted upon, for further consideration and possibly amendment; and when this occurred the British government broke off negotiations for a similar treaty with their West India Islands.

The question as to whether it is desirable entirely to take off the duties on sugar, which are a convenient means of raising revenue, is not my province to discuss; but if those duties are either to be removed or

lowered, it would seem better to use them as a means of obtaining concessions from other powers, rather than to throw away all the advantages which we now possess, by lowering or abolishing the sugar duties by a general law.

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